ELECTION CASE OF BRIGHAM H. ROBERTS,
OF UTAH.

STATEMENT OF MR. ROBERTS

BEFORE THE COMMITTEE

JANUARY 5 AND 6, 1900.

STATEMENT OF MR. ROBERTS.

Mr. ROBERTS. Mr. Chairman and Gentlemen of the Committee: As I stand face to face with the task of presenting this case before the committee I could well wish that the presentation was about to be made by a master hand, one who had been trained in the law and accustomed to legal argument. I have already explained, however, to the committee that I do not possess that training. I only have a general knowledge of the law, and have been compelled to get along with this case as best I could with such investigation as I could give it, based, of course, upon some general knowledge of the institutions of my country. I shall proceed first by a statement of the rise of this case in the House, and as it now stands before this committee; and in order that that statement may be entirely correct I have written that much of my remarks out and will now read them.

The questions to be considered are the prima facie and final right of B. H. Roberts, Representative-elect from Utah, to a seat in the House of Representatives, to which he was elected in the month of November, 1898, by the people of Utah. The electorate of said State gave him a plurality vote of 5,665. It is a case in which there is no contest, and where it appears, so far as the proceedings before this committee are concerned, the Representative-elect possesses all of the qualifications prescribed by the Constitution of the United States, and where there is no statute, so far as made to appear in the proceedings before this committee, either in the State of Utah or the United States, applicable to the case which disqualifies the Representative-elect from Utah for the office of Congressman in the lower House of the American Congress. But when the State of Utah was called, during the roll call of States, for the purpose of having the respective Representatives-elect qualify, Mr. Tayler, Representative from Ohio, arose and, upon his own responsibility as a member of the House, objected to the swearing in of the Representative-elect from Utah, because "specific, serious, and apparently well-grounded charges of ineligibility" were made against him.

From the statement made by the gentleman from Ohio, it appears that the aforesaid "specific, serious, and apparently well-grounded charges of ineligibility" consisted of a transcript of the proceedings of a court in Utah, giving evidence to the effect that the member from Utah did, in 1889, plead guilty to a misdemeanor defined as unlawful cohabitation; and further, that upon the strength of affidavits and other papers in the possession of the objecting member (Mr. Tayler),

it was charged that since 1890 the member from Utah had been guilty of the same offense—that ever since then, and now, he has been a polygamist. "If this transcript and this evidence," remarked the member from Ohio, "tell the truth, the member-elect from Utah is, in my judgment, ineligible to be a member of this House of Representatives, both because of the statutory disqualifications created by the Edmunds law, and for higher and graver and quite as sound reasons;" though what the "higher and graver and quite as sound reasons" were, aside from the disqualifications created by the Edmunds law, the member from Ohio did not at that time specify, except to hint that the citizenship of the member-elect from Utah was questionable and perhaps vitiated by some defect, which learned counsel had suggested to the member from Ohio, but he refrained from expressing any opinion upon that subject.

The gentlemen from Ohio further stated that the gravity of the charges made against the member-elect from Utah were further emphasized by memorials and petitions from several millions of American men and women, protesting against the entrance into the House of Representatives of the member-elect from Utah. [The objection of the member from Ohio was seconded by a member from Arkansas, Mr. McRea, whereupon the member from Utah was requested by the Speaker of the House to stand aside, which he did, saying, however, that in complying with the request of the Speaker he waived none of his rights.] Subsequently the following resolution was introduced by the member from Ohio, Mr. Tayler:

Whereas it is charged that Brigham H. Roberts, a Representative-elect to the Fifty-sixth Congress from the State of Utah, is ineligible to a seat in the House of Representatives; and

Whereas such charge is made through a member of this House, on his responsibility as such member and on the basis, as he asserts, of public records, affidavits, and papers evidencing such ineligibility:

Resolved, That the question of the prima facie right of Brigham H. Roberts to be sworn in as a Representative from the State of Utah in the Fifty-sixth Congress, as well as of his final right to a seat therein as such Representative, be referred to a special committee of nine members of the House, to be appointed by the Speaker, and until such committee shall report upon and the House decide such question and right, the said Brigham H. Roberts shall not be sworn in or be permitted to occupy a seat in this House; and said committee shall have power to send for persons and papers and examine witnesses on oath in relation to the subject-matter of this resolution.

It is under the authority of this resolution of the House that the committee has had under consideration the prima facie and the final right of the member-elect from Utah to a seat in Congress.

At the meeting of the committee on December 8 the following, after reciting the resolution passed by the House and quoted above, was submitted, containing the charges against Roberts:

The charges made, upon which the resolution was based, were that you had been convicted of unlawful cohabitation in 1889; that since then you have been guilty of the same offense; that some years ago you contracted plural marriages, and that ever since then you have maintained polygamous relations with the wives of those plural marriages.

Touching your request that the committee separate its inquiry into your prima facie right and your ultimate right to a seat, it has concluded that at this stage, in advance of hearing, it does not feel at liberty to determine what its course will be in respect to the order of reporting its conclusions. It will therefore consider and hear testimony respecting the facts in so far as they bear upon all the questions in the inquiry.

It now appears to the committee that a material matter of fact to be ascertained and

reported by the committee is as to whether or not you contracted, as early as 1887, or prior to October, 1890, or since, plural marrriages and have maintained ever since polygamous relations with these plural wives.

The committee instruct me to say that if you wish to make any statement about this or any other matter connected with the investigation with which it is charged you may do so in your own way.

To these several charges the member from Utah made the following answers:

1. Roberts concedes the fact established by the records of the Third United States judicial district court in and for the Territory of Utah, submitted for his inspection, to wit, that in 1889, in the Territory of Utah, he pleaded guilty to the misdemeanor charged against him of unlawful cohabitation.

2. In the testimony submitted it nowhere appears that there is any affidavit or other testimony offered before the committee that Roberts, about 1887, or previous to October, 1890, or since, contracted plural marriages, further than may be inferred from his confession to the misdemeanor of unlawful cohabitation in 1889, as set out in the court records, and therefore on that point he enters no plea, because there is no charge or testimony alleging it.

3. In the papers submitted, which are supposed to sustain the loose and irregular charges against Roberts, it nowhere appears that there is any affidavit or other testimony that Roberts, either before or since 1890, contracted plural marriages, but as to the inquiry of the committee on this subject he specifically denies that since October, 1890, he has contracted any plural marriages.

4. To the charge that ever since 1889, when Roberts pleaded guilty to unlawful cohabitation in the then Territory of Utah, that he has lived in polygamous relations, in violation of law, he pleads not guilty.

These several specific answers he offered as a full plea of not guilty to the charges made against him, except that he conceded the fact established by the court record referred to above.

This plea on the part of the member from Utah raised the question of his guilt or innocence as to the misdemeanor of unlawful cohabitation since 1889 and now. The committee having no court record establishing the alleged guilt of the member from Utah regarding the charges not proven by the said court record of 1889, proposed an inquiry upon the subject by sending to Utah for witnesses to testify before this committee. To the proposition to enter into this examination the member from Utah demurred, both in oral argument and subsequently by filing a written brief, citing authorities in support of the several points of law raised in his demurrer.

Mr. Chairman, I would now ask that that printed brief be made a part of the record of these proceedings. With that statement of the case as it rose before the House of Representatives and is now before this committee, I think I may proceed to the argument that I have outlined upon this question. It may be possible that the usual method of procedure in argument of this kind would be to reply to the argument that has been made upon the other side of the case. From the consideration of that argument, however, it seems to me that I shall not be under the necessity of departing from the outline of the argument I have proposed to myself further, perhaps, than to state at this point the substantial points of the contention that was made. I think the arguments presented here yesterday may be reduced to the four following propositions:

First. That Congress can prescribe qualifications in addition to those enumerated in the Constitution of the United States; and the gentleman urged that even the oath of office prescribed for members to take is an evidence of that contention.

Second. It is urged that the Edmunds law of 1882, made for Territories and other places over which the United States has exclusive

jurisdiction under certain conditions, defined disqualifications for Territorial and United States officers in such Territores and places. It is held by the opposition that a Congressman is an officer under the United States; and hence—since the "certain conditions" referred to (polygamous living) are alleged to exist—these disqualifications now operate upon the Congressman from Utah.

Third. It is claimed that Roberts's citizenship was impaired by violation of the Edmunds law in 1889; and the defect has not been amended by Presidential amnesties, or the enabling act for the State of Utah, or by the adoption of the constitution for Utah; and that the member from Utah is still under the disqualifications of the said Edmund's law.

Fourth. It was contended that there is a compact between the United States and the State of Utah, and that Utah has violated that compact by electing the present Representative from that State to be a member of this House.

I think that those four points cover the material argument which was presented here yesterday; but, as already stated, I do not find it necessary now to enter into any consideration of these propositions, as I shall meet with them in the course of the argument I have outlined, and will deal with them as they thus present themselves. I prefer, Mr. Chairman, to take up this subject as it seems to me to present itself in logical order; that is, the committee is directed by resolution of the House to inquire into the prima facie right and the final right of the member from Utah; and consequently I begin with the proposition as to the prima facie right of the member-elect from Utah to his seat.

When a Representative-elect from a State presents himself at the bar of the House with credentials properly signed and attested, and requests to be sworn in, as he has a right to do, the House is then "the judge" of the following qualifications:

First. His election; that is, has he been legally and beyond all question elected?

Second. Are the returns proper and valid?

Third. The House may inquire as to the qualifications of the Representative.

No question, as I understand it, is raised as to the election of the Representative from Utah, or the correctness of the returns. The point of contention is in relation to his qualifications.

Mr. MIERS. I do not know that I understand you. You hold they may inquire into the election when a member presents himself to be sworn; is that your position?

Mr. ROBERTS. If any question is raised in regard to it I hold they may so inquire.

Mr. MIERS. The question might be raised of the election at that time; is that your position?

Mr. ROBERTS. Not in such a way, however, as to bar him from being sworn in. The whole controversy before this committee, as I before remarked, is as to the qualifications of this member. The House of Representatives, I contend, can not prescribe qualifications for its membership. They are made "the judge" of the qualifications, but are nowhere authorized to prescribe qualifications. The qualifications of a Representative prescribed by the Constitution of the United States are:

First, the member must be 25 years of age.

Second, he must have been seven years a citizen of the United States.

Third, he must have been an inhabitant of the State in which he is chosen.

Fourth, he must be chosen by the people of his State, the electors having the qualifications requisite for electors of the most numerous branch of the State legislature.

Article 1, section 2, of the Constitution of the United States:

1. The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

2. No person shall be a Representative who shall not have attained to the age of 25 years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

It is at this point that I meet one of the contentions of the opposition, namely, that these qualifications, since they are expressed negatively, make the proposition stand thus: A Representative must at least possess these qualifications, but the matter is left open to other qualifications to be prescribed. On that subject I hope to be able to bring such authorities as will show that possession of these qualifications prescribed by the Constitution act in exclusion of any others that might be demanded; and first of all I refer to the oath of office that is required of Members of the House. So far as I am able to analyze that oath, it does not prescribe additional qualifications, but it merely requires that the Member offering himself for the high office of Representative shall take an oath to support and defend the Constitution of the United States against all enemies, foreign or domestic. That oath does not prescribe a single qualification.

Upon the question of these qualifications being expressed negatively, I wish to say that in my judgment they are so expressed because they can not be very well expressed in any other form. I believe there was an effort made to transpose the affirmative and negative expression of these qualifications here yesterday, but you need only to try the experiment to discover that the result of the negative expression of the qualifications in paragraph 2 of section 2, and the affirmative expression of the qualifications in paragraph 1 of section 2, exhibits a very clumsy phraseology, and, hence, there is no importance to be attached to the negative expression of these qualifications further than the fact that they are more strongly expressed in that way than they could be in any other.

But in the event of the contention being insisted upon that this negative expression of these qualifications does leave the matter open for the requirement of additional qualifications to those named in the Constitution, who is to prescribe the additional qualifications? Not the House of Representatives; not Congress; unless it can find express warrant for the exercise of such authority in the Constitution of the United States, because I think that it is a well-established doctrine that the powers that are not granted to the United States by the express provisions of the Constitution are reserved to the States, respectively, or to the people. So that if it is contended that other qualifications than those enumerated in the Constitution may be prescribed, it is quite evident that neither the House nor Congress are the proper parties to say what the additional qualifications shall be. A decision which I

think will be accepted as final authority upon the subject is extant to the effect that a State can not make additional qualifications for this office. That is to be found in a case that came up from Illinois——

Mr. MORRIS. What is the title of the case?

Mr. ROBERTS. It is Foulke *v.* Trumble and Turney *v.* Marshall, 1 Bart., 168.

Mr. LITTLEFIELD. It is an election case.

Mr. ROBERTS. It is one of the Illinois cases; and I acknowledge, Mr. Chairman, it is not particularly in point here, only so far as the report of the committee of Congress in that case announces very clearly the doctrine to which I refer, and it is that part of the matter that I now read. I have it here in Paine on Elections, paragraph 134, page 103. This is the case:

SEC. 134. This subject was considered by the House of Representatives in the Thirty-fourth Congress. The tenth section of the fifth article of the constitution of the State of Illinois, which was adopted on the 5th day of May, 1848, provided that the judges of the supreme and circuit courts should not be eligible to any other office or public trust of profit in that State or the United States during the term for which they were elected, nor for one year thereafter; that all votes for either of them for any elective office (except that of judge of the supreme or circuit court) given by the general assembly or the people should be void.

The contestants in these cases claimed the right to seats in the Thirty-fourth Congress solely upon the ground that the votes cast for Messrs. Marshall and Trumbull, respectively, were null and void, not because of any disqualification in the electors who thus voted, but because Mr. Marshall had been elected a circuit judge and Mr. Trumbull a supreme judge within the State of Illinois, each for a term of years which had not expired at the time of the Congressional election. It was contended that this presented the question whether a State could superadd to the qualifications prescribed for Representatives in Congress by the Constitution of the United States.

The Committee on Elections, having shown what the qualifications of a Representative under the Constitution are—that he shall have attained the age of 25 years, shall have been seven years a citizen of the United States, and, when elected, an inhabitant of the State in which he shall be chosen—declare that it is a fair presumption that when the Constitution prescribed these qualifications as necessary to a Representative in Congress it was meant to exclude all others. And they conclude that it is equally clear that a State of the Union has not the power to superadd qualifications to those prescribed by the Constitution for Representatives; has not the power to take away from the people of the States the right given them by the Constitution to choose, every second year, as their Representative in Congress any person who has the required age, citizenship, and residence; that to admit such a power in any State is to admit the power of the States, by a legislative enactment or a constitutional provision, to prevent altogether the choice of a Representative by the people; that the assertion of such a power by a State is inconsistent with the supremacy of the Constitution of the United States and makes void the provision that that Constitution shall be the supreme law of the land, anything in the constitution or laws of any State to the contrary notwithstanding. They submit that the position assumed by those who claim for the States this power, that its exercise in no way conflicts with the Constitution or the right of the people under it to choose any person having the qualifications therein prescribed, has no foundation in fact; that by the Constitution the people have a right to choose as Representative any person having only the qualifications therein mentioned without superadding thereto any additional qualifications whatever; that a power to add new qualifications is certainly equivalent to a power to vary or change them, and that an additional qualification imposed by State authority would necessarily disqualify any person who had only the qualifications prescribed by the Federal Constitution.

The report of the committee was adopted.

Mr. ROBERTS. I can add nothing, of course, to the clearness of that reasoning, and I wish to say that if it is contended that the House of Representatives or that Congress can add to the qualifications of a member other than those prescribed in the Constitution of the United States, this reasoning here applied in the case just cited would extend to that condition; that is, the House could vary those qualifications at

will. If they could add one qualification they could add any number of qualifications, of course, and you would be started upon a sea of difficulties which to my mind is absolutely shoreless. You would have nothing to restrain you or limit you. You may respond to every popular clamor that shall be raised from any and every possible source and prejudice. It is now a clamor against a Mormon; but at another time the demand to prescribe an additional qualification may be for a Catholic or an atheist. It is now over a matter once associated with a religious belief, but next time it may be connected with unpopular political matters. On the same subject I read a statement by Justice Story, than whom, I take it, there is no higher authority on constitutional questions.

Commenting upon this very section of the Constitution, at section 625 of his works, he makes this remark:

Mr. MORRIS. That is Story on the Constitution.

Mr. ROBERTS. Yes, sir. He says:

> It would seem fair reasoning, upon the plainest principles of interpretation, that when the Constitution establishes certain qualifications as necessary for office it meant to exclude all others as prerequisite; that from the very nature of such a provision the affirmation of these qualifications would seem to imply a negative of all others.

But, Mr. Chairman, I have in a way conceded that the second paragraph in section 2 of the Constitution—that which states the qualifications of a Representative negatively—may leave the question open as to some qualifications of members of Congress, but I do not believe the House of Representatives can prescribe those qualifications, or that a State can prescribe them. Then, who can? Why, those in whom is lodged the reserved power not granted to the United States by the Constitution of the United States and not allowed to States by State constitutions. Upon this subject—and, by the way, it is directly in point—I quote from the Congressional Globe of the Forty-second Congress, third session, Part III, beginning at page 1651. It is a report of the Judiciary Committee in regard to the Credit Mobilier cases.

Mr. LANHAM. That is all in your printed brief?

Mr. ROBERTS. No, sir; part of it is. The reference in the brief, unfortunately, was omitted, and I give it here in order that gentlemen may examine the report.

The CHAIRMAN. That was a report declaring against the power of expulsion by the House.

Mr. ROBERTS. Declaring against the power both of expulsion and impeachment.

The CHAIRMAN. Oh, no.

Mr. ROBERTS. It included the question of impeachment of the then Vice-President, Mr. Colfax, at any rate.

The CHAIRMAN. Did not the Poland committee previously report in favor of expelling Oakes Ames and James Brooks for their conduct in connection with the Credit Mobilier matter, and thereupon the Committee on the Judiciary was charged with that duty and they reported back the opposite ground, that the House had no right to expel Oakes Ames and James Brooks for their previous conduct in connection with the Credit Mobilier matter, on the ground that their misconduct occurred prior to the then sitting House of Representatives——

Mr. ROBERTS. And of their election.

The CHAIRMAN. And of their election. Exactly, and the House adopted the resolution that the Judiciary Committee proposed, censuring Brooks and Ames, but refused to expel them.

Mr. ROBERTS. Yes, sir; that is the case. Their investigation also included an inquiry into the conduct of the Vice-President at that time, who was associated with Brooks and Ames.

The CHAIRMAN. But the resolution and that report only covered Oakes Ames and James Brooks.

Mr. ROBERTS. And incidentally they discussed this question that is in point here; and as that report was signed by such able lawyers as John A. Bingham, B. F. Butler, Charles A. Eldredge, J. A. Peters, L. D. Shoemaker, and D. W. Voorhees I take it that that is about as good a legal statement of the case as I have at my command, and I read it for that reason. They come directly to the question that is before this committee. The plea had been made that out of consideration of "justice and sound policy" the House of Representatives ought to exercise its powers in the expulsion of members even if it became necessary to establish new qualifications for the members of Congress, and upon that subject they submit the following:

The House of Representatives has no constitutional power over such considerations of "justice and sound policy" as a qualification in representation.[1] On the contrary, the Constitution has given this power to another and higher authority, to wit, the constituency of the member. Every intendment of our form of government would seem to point to that. This is a government of the people, which assumes that they are the best judges of the social, intellectual, and moral qualifications of their Representatives whom they are to choose, not anybody to choose for them, and we therefore find in the people's Constitution and frame of government that they have in the very first article, and second section, determined that, "The House of Representatives shall be composed of members chosen every second year by the people of the States," not by representatives chosen for them, and that the will and caprice of members of Congress from other States, according to the notion of "the necessities of self-preservation and self-purification," which might suggest themselves to the reason or caprice of members from other States, in any process of "purgation or purification," which two-thirds of the members of either House may "deem necessary" to prevent bringing "the body into contempt and disgrace."

Your committee are further emboldened to take this view of this very important constitutional question, because they find that in the same section it is provided what shall be the qualifications of a representative of the people, so chosen by the people themselves. On this it is solemnly enacted, unchanged during the life of the nation, that—

"No person shall be a Representative who shall not have attained the age of twenty-five years and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen."

Your committee believe that there is no man, or body of men, who can add to or take away "one jot or tittle" of these qualifications. The enumeration of such specified qualifications necessarily excludes every other. It is respectfully submitted that it is nowhere provided that the House of Representatives shall consist of such members as are left after the process of "purgation and purification" shall have been exercised for the public safety, such as may be "deemed necessary" by any majority of the House. The power itself seems to be too dangerous, the claim of power too exaggerated, to be confided in any body of men, and therefore most wisely retained in the people themselves by the express words of the Constitution.

"The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people."

"The powers not delegated to the United States by the Constitution, nor prohibited to it by the States, are reserved to the States respectively, or the people." (IX and X amendments to Constitution.)

Mr. MCPHERSON. Who signed that report?

Mr. ROBERTS. John A. Bingham, B. F. Butler, Charles A. Eldredge, J. A. Peters, L. D. Shoemaker, and D. W. Voorhees.

[1] That is, to fix a new qualification for Representatives.

The CHAIRMAN. Do you mean to say that those gentlemen always took the position they took in that case?

Mr. ROBERTS. No, sir; I do not know that I can say that.

Mr. MCPHERSON. Who signed the other report holding otherwise; the report of the Poland committee?

The CHAIRMAN. The only question was the question of expulsion and not the question of exclusion, and the argument that is made by Mr. Roberts has application as well to the question of expulsion as to exclusion.

Mr. ROBERTS. Yes, sir; I read that part of the report, because it sustains the point I am now discussing, viz, the power to demand additional qualifications to those enumerated in the Constitution.

Mr. MCPHERSON. I was trying to fix the names of the men who were on the Poland committee who held otherwise in the same case. I have forgotten.

Mr. ROBERTS. The committee that offered the other report? I do not know; I do not remember now. These were members of the Judiciary Committee of the House; but the committee which submitted a report to the House favoring expulsion was a special committee of the House.

Mr. Chairman, it seems to me that if there is any substance whatever in the contention that there is significance in the qualifications of a Congressman being expressed negatively in the Constitution, and that therefore other qualifications than those enumerated may be required of him, the only power that can enforce the requirement must be the people, not the House of Representatives, nor the Congress, nor the States. It is left to the constituency of Congressmen to determine what shall be the intellectual standing of the man who represents them—what shall be the moral standing of the man. The people of the United States have not confided that power either to the State governments, nor to the House of Representatives, nor the whole Congress.

The CHAIRMAN. You would contend that the House in its action upon the Kentucky cases and the Whittimore case of South Carolina exceeded its power?

Mr. ROBERTS. Yes, sir. Those qualifications enumerated in the Constitution being all that may be legally inquired into by this committee or by the House, I wish to call attention to the fact that the Congressman-elect from Utah possesses all of those qualifications enumerated in the Constitution. In fact, so far as I know, it is not controverted or attempted to be controverted that the member from Utah has all those qualifications, except it be, perhaps, in relation to this question of citizenship that was thrown in sight by the gentleman who first drew the indictment upon the floor of the House against the member from Utah and mentioned here yesterday by the opposition, and to which reference is also to be found in a memorial that is presented to the House of Representatives in relation to the seating of B. H. Roberts from Utah. In that memorial the statement is baldly made, without any reservation whatever—

That the said B. H. Roberts was born within the realm and Kingdom of Great Britain, of parents who were then subjects to the Queen of Great Britain, and that the said Brigham H. Roberts has never renounced his allegiance to the said Queen of Great Britain, and that said Roberts has never conformed to the provisions prescribed by the statutes of the United States for the admission of aliens as citizens of the United States of America.

So that it would appear that the citizenship of the member from Utah is challenged. I have not seen the transcript from the court that issued his naturalization papers, but I do wish to say that the member from Utah, so far as it laid in his power, complied with the requirements of the statute. He came to this country between the ages of 8 and 9 and made his residence in Utah.

Mr. LITTLEFIELD. What year, please?

Mr. ROBERTS. 1866; arriving in the Territory of Utah in October of that year. It is a law of the United States, I believe, that where a head of a family comes to this country and complies with the statute of naturalization that his naturalization also naturalizes all his minor children. When I came to this country with my only surviving parent she was a widow. She married a native-born citizen of the United States; and when I began to make inquiry concerning the matter of my naturalization, a number of lawyers insisted that the fact that she had become naturalized by her marriage with a native-born citizen that act naturalized me also. But not being satisfied with that, in order that there might be no question as to my being a citizen of the United States, I went before a court of competent jurisdiction and did make the proper renunciation of allegiance to Great Britain and complied with the statutes of the United States upon that subject, in order that——

Mr. LITTLEFIELD. Where were you born?

Mr. ROBERTS. I was born in Warrington, in the county of Lancastershire, England. I present here the certificate that was issued to me by that court before which I appeared [exhibiting same]. I appeared before Judge Emerson and went through the whole formula that was prescribed, and received from that court a certificate of citizenship which bears the seal of the first judicial district court of the United States of America for the Territory of Utah, and submit it here in evidence. It is issued by A. L. Emerson, clerk of the court, the son of the judge, I believe, before whom I qualified as a citizen of the United States.

There was brought to me on the floor of the House, when my citizenship was questioned there, what purported to be a transcript of the court proceedings, and that transcript fixed the *third* (not the first) *judicial district* of the Territory of Utah as being the one before which my naturalization took place, but that was quite wrong. I am sure that *was not a certified copy*, however, of the transcript from the court. My naturalization papers bear the seal of the first district of the United States court in and for the Territory of Utah. Until a true transcript is placed in my hands for further examination I can offer no further argument upon this question; but I shall hold, Mr. Chairman, that there is no defect in the citizenship of the member from Utah upon the strength of this certificate of the court authorized to issue such a certificate, and therefore shall hold that since the member from Utah possesses all the qualifications prescribed by the Constitution of the United States his prima facie right to a seat in the House of Representatives is very clearly established.

I wish to call attention to the fact that I urged upon the committee that they take some action with reference to this part of the subject referred to them first. In refusing to do it, in my judgment a substantial wrong has been inflicted both upon myself as an individual member of the House and also upon the State of Utah—in this, that the

mileage of the member from Utah, amounting to about $1,000, his clerk hire, his stationery allowance, and also his salary for the present month, amounting in all to some $1,600, is withheld. Of course that may not be a very great affair; but in such matters I can not conceive of the great Government of the United States wishing to put to inconvenience even as humble a member of the House of Representatives as the member from Utah may be considered.

But, on the other hand, I hold that the wrong done to the State of Utah is very substantial in that for more than a month now she has been deprived absolutely of representation upon the floor of the House, and during that time a measure which will most affect the interests of the people of Utah has passed that House. A measure that affects the interests of the people of Utah, in common with the interest of all the people of the United States, but which specifically may injure the people of Utah in that it affects one of the greatest industries of that State, viz, silver mining. I refer, of course, to the financial bill, which has been passed and which changes the standard of money in this country. The silver-mining industry in the State of Utah is, as already remarked, one of the principal industries of the State. The product of silver in that State amounted to $10,000,000 in the year 1899. Utah stands third in the list of States in the production of that precious metal, and all this time she has had no voice upon the floor of the House to represent her interests, so materially affected by the currency bill now passed. Consequently, in addition to the affront that is given to the State of Utah, there is affected one of her material interests in the passing of the measure, concerning which she could raise no protest.

Mr. Chairman, it must be held that since the member from Utah has a prima facie right to his seat in the House of Representatives, he had as perfect a title to his seat as any member of this committee or of the House who has been permitted to take the oath of office; and in the action that has been taken, in my humble judgment, a very serious precedent is contemplated if this procedure is permitted to go to the conclusion that has been predicted for it. In the State of Utah we have been connected quite often with constitutional controversies, which have led us to become, I think, very much alive to the seriousness of what is called by the writers "Constitutional Morality," which is generally understood to be an adherence to the fundamental doctrines of the Government, and that any breach in the Constitution is a very serious matter. However small it may seem in its beginning, in its results it may be like the overlapping waves of the levees of the great Mississippi, which if not instantly stopped may go on and on, wearing and wearing continuously, until a gap shall be opened through which will rush the floods that will overwhelm all the land with flood and ruin. Consequently, although I understand young members of the House are cautioned against growing too anxious about the preservation of the Constitution, I feel constrained at least to call the attention of the committee to what I regard as the unconstitutional procedure in this case and the menace it will be, if consummated, to our free institutions.

I next proceed to the consideration of the final right of the member from Utah to his seat.

Mr. MORRIS. Do I understand, Mr. Roberts, that you have finished that part of your argument in regard to your right to be sworn in?

Mr. ROBERTS. Yes, sir.

Mr. MORRIS. And now you proceed to that part of the argument which covers the question of expulsion?

Mr. ROBERTS. No, sir; to the right to retain my seat—to my final right.

Mr. MORRIS. After once being sworn in?

Mr. ROBERTS. Yes, sir; or to be admitted. The whole question of my right to my seat is involved in the propositions I next proceed to consider.

Mr. MORRIS. I asked the question because it has been suggested in some quarters that you would have the right to be sworn in, and then the House could turn around afterwards and expel you. Do you expect now to proceed to that part of the argument?

Mr. ROBERTS. Not upon the question of expulsion. As I understand it, the proposition is to exclude me. The matter that I propose entering into is my right to my seat, whether it shall be attempted to exclude me or expel me. It covers the whole question. This part of my argument, of course, deals with the question of eligibility. The proposition is to exclude me from the seat to which I was elected, because, it is claimed, I am ineligible; and that would involve the consideration of the fact of my having pleaded guilty to the misdemeanor of unlawful cohabitation in 1889, and which was attended by disqualification for voting and holding office. It is also charged that from that time (1889) until now I have continued to live in violation of the law. I could not quite understand the silence of counsel (Mr. Schroeder)—I suppose he would be called the counsel for the other side—in regard to the evidence that has been submitted to the committee; but if he passed it over in silence I suppose he did so because he took it for granted that it established the charge that I had since 1889 lived in violation of the law. This, I understood, was his position. As this, I presume, is the only opportunity I shall have to enter into this question before the committee, of necessity I must inquire into this testimony. I shall leave for a moment the consideration of the fact of having pleaded guilty to a misdemeanor in 1889 and take up the testimony that has been given by the witnesses before this committee.

I shall group the testimony of these witnesses, or rather group the witnesses themselves with reference to their testimony.

The first group consists of C. M. Owen, Rev. T. C. Iliff, Rev. G. W. Martin, and Rev. E. H. Parsons. They all testified merely to the general reputation existing in Utah of polygamous relations between myself and the ladies in question, with the exception of Mr. Parsons, who testified that he had called up, over the telephone, one Dr. Margaret C. Roberts at 8 o'clock in the morning and had been answered by some one who said he was B. H. Roberts.

Aside from that, I take it, the first group of witnesses testified solely to a general reputation existing in the State of Utah that B. H. Roberts sustained polygamous relations with the women named in the charges.

The testimony of the second group of witnesses refer to the relations between B. H. Roberts and one Dr. Margaret C. Roberts. These witnesses were Dr. Wishard, Dr. Luellen P. Miles, and Mrs. McDougall.

Mr. Wishard, on the 4th day of December, 1899, signed an affidavit in Washington stating in substance that he had been introduced to one Dr. Margaret Shipp Roberts. I don't know whether the gentleman, feeling a little dissatisfied with the affidavit he had given, thought it

necessary to go to Utah to find out whether it was true or not; but certainly he did go to Utah, and while in Utah claimed to have waited upon the Dr. Roberts in question, and found out that she was the same lady he had been introduced to some years before upon the train at Manti.

Dr. Wishard came before the committee and was questioned upon that subject, he claiming that the introduction took place on a train leaving the city of Manti. He was asked the question whether the introduction on the part of Mr. Roberts was "This is my wife" or "This is Mrs. Roberts," and the gentleman was not quite certain which term had been used. And I undertake to say that it is very, very doubtful if either term was used. He doubted one or the other of the forms of the introduction. I question both of them, and for this reason: This man Wishard had been, I may say without exaggeration, violently opposed to the member from Utah for quite a number of years. We were by no means friends. Our relations were strained. I had regarded him as an enemy of my people.

The CHAIRMAN. If you want to testify you ought to go on the witness stand.

Mr. ROBERTS. I am not testifying. I am arguing from the testimony.

Mr. LITTLEFIELD. You are arguing that a statement that is not denied by anybody as a witness ought not to be believed, as I understand it.

Mr. ROBERTS. What is that?

Mr. LITTLEFIELD. I understand that you are arguing that a statement, not denied by anybody as a witness, ought not to be believed.

Mr. ROBERTS. If the character of the circumstances are such that it renders it improbable.

Mr. LITTLEFIELD. That is a legitimate argument.

Mr. ROBERTS. That was what I was trying to argue.

The CHAIRMAN. But you are describing your relations to him from your standpoint.

Mr. ROBERTS. Yes.

The CHAIRMAN. That is as much testimony as anything else.

Mr. LITTLEFIELD. It is if we take it as such.

The CHAIRMAN. Yes.

Mr. LITTLEFIELD. We do not take it unless he makes the statement as a witness.

Mr. DE ARMOND. I think it is legitimate argument.

The CHAIRMAN. For him to describe his personal relations with the witness he speaks of?

Mr. DE ARMOND. Yes.

The CHAIRMAN. I beg your pardon, but that would certainly be ruled as improper.

Mr. DE ARMOND. The latitude that has been allowed in this case has been very great, and the committee, I think, will discriminate between evidence and argument—at least I think I know one who will try to do so.

The CHAIRMAN. But I do not understand how it is possible that a person arguing a case can undertake to give the committee substantive and positive information as to his personal relations and feelings toward a witness whose testimony he is commenting upon and not do that under oath.

Mr. LITTLEFIELD. As long as Mr. Roberts understands the distinction we shall make between argument and evidence I don't see that

there is any objection to his making the statement he is making in argument.

Mr. De Armond. It is not so important that he should understand the distinction as that we do.

Mr. Littlefield. No; it is not.

The Chairman. So far as he comes within the scope of the examinations, all right; but he can not go outside of that.

Mr. Roberts. As I remember the cross-examination upon that particular point, questions were asked Mr. Wishard that substantially amounted to pointing out the differences between us and the pronounced opposition that existed.

Mr. Morris (reading from the testimony of Rev. E. S. Wishard).

Q. Have you not been very pronounced against Mormonism?—A. Yes, sir; I have been very pronounced in my views.

Q. Did you not join with other ministers of your church in the publication called "Ten reasons why Christians should not fellowship Mormons?"—A. Yes, sir.

Q. You took a prominent part in all those things, didn't you?—A. Yes.

That is in the testimony.

Mr. Roberts. And it is further along in the testimony that I asked the gentleman at that time if I was drunk on the occasion of the introduction, or if I was insane at that particular time, and for the reason that I knew him to be a personal enemy and therefore could not have introduced him to the lady under those circumstances, or would not have done so.

The Chairman. I ask Judge De Armond as a lawyer if that is a proper statement. Not that I care about it particularly, but as a matter of correct procedure. Mr. Roberts says, "I knew Mr. Wishard to be a personal enemy of mine, ergo, I could not have said things that it is alleged I said to him."

Mr. De Armond. My view is this: In view of the wide range the examination has taken—the examination and the cross-examination—that there is nothing in the line of argument that this gentleman may make, who is a layman and not a lawyer, that ought to prejudice the minds of the committee, no matter what line of argument he may choose to pursue.

The Chairman. But he has refused to go upon the witness stand. He declined to submit himself to examination. Now he proposes, in arguendo, to state facts, closing his mouth either to a prosecution for perjury, if he should not be telling the truth, or our right to cross-examine him. Therefore he is not in the position of a person ordinarily arguing here and using those weapons that argument makes proper. But he declares his personal relations with this man were of that character, reciting a fact relating to that not covered by anything that Mr. Wishard said—that Mr. Wishard was not on friendly personal relations with Mr. Roberts, and therefore it was impossible that Mr. Roberts should have said anything to him.

Mr. De Armond. I don't know what Mr. Wishard said upon that point, but my understanding is that in arguing a case, an impression of the man who is arguing as to a thing of that kind can be allowed to be used for his purpose, and the committee will not be bound by his impressions, but will be controlled by their own judgment, and will discriminate between what is testimony and what is not testimony.

The Chairman. Do you mean to say, Judge, that we are to permit him to proceed here and say, "I deny this fact, I deny that this

is a fact, and that the other thing is a fact," and that we are going to undertake later on to differentiate between what is proper and what is improper—undertake to make notes of those things which he denies properly and those things which he denies improperly?

Mr. De Armond. I am prepared to say that I can do it very easily. He has not testified at all, and my understanding is that we will have no testimony to consider from Mr. Roberts. Therefore I will have no trouble in differentiating between that which is argument and that which is no argument.

The Chairman. For my part, I shall object to his stating facts which are essential—items of evidence which he does present as evidence upon his own motion. If he desires to be sworn respecting his relations with Mr. Wishard he has a right to be sworn. I shall object, as I have said, not because that is important, but because it is evident he intends to continue along that line to asseverate certain things that are contradictory of statements of fact by witnesses. I don't think we have a right to be constantly disturbed mentally by the alleged facts brought out in argument by Mr. Roberts, which he declines to testify to under oath.

Mr. De Armond. I am not in that state of mental disturbance that I am disturbed by what he is going to say. I don't know what he is going to say. I do not find myself able to anticipate what he is going to say. I can not see into his argument so far as the chairman can apparently see. I do not know whether what Mr. Roberts is arguing may be authorized by the testimony or not, because I don't know how far the examination went. Even if it be not authorized by the testimony, it does not seem to me that this committee, in examining this case, will be liable to be controlled by the influence of belief that Mr. Roberts is testifying when he certainly has not testified. Now, if Mr. Roberts had testified, and if he were then making an argument and mixing testimony and argument in a way that might be confusing, I can understand how some harm might be done, but nothing that comes from him is testimony, because he has not testified at all.

The Chairman. Therefore he should continue to make statements of fact ad libitum?

Mr. De Armond. That proposition I do not understand to be before us at all.

The Chairman. That is the proposition I have up, for I attach no particular importance to the particular thing he is now stating. I understand that Judge De Armond's statement is that we are a committee of discriminating and acute lawyers, and when he makes statements of fact here we know they are not testimony, and that we will exclude from our minds, because of our acuteness and discrimination, what effect that may have produced upon them by his statements of facts.

Mr. De Armond. No; I would not put it that way. I do not lay any special emphasis upon the "acute" proposition. My idea is that even an obtuse lawyer ought to be able to discriminate between what is said in argument and what is said in testimony when the person has not testified at all.

The Chairman. So he is at liberty to state any matters of fact?

Mr. De Armond. No; not at all. My view of it is, as to the particular subject that was up, that while he may be outside of the record, and I do not say that he is not, I do not see how harm can come from

it, and I do not see that the interruption by the chairman, if I may be pardoned, was at all called for. I do not wish to criticise, but I do not see how the chairman can do it. I can not do it. The argument has been one of great latitude. It might have been suggested yesterday, for instance, when the argument went on for an hour or an hour and a half as to the compact between Utah and the United States, that the compact might be found in the enabling act and the constitution of Utah instead of speeches and testimony taken years before, when there were a lot of attempts made to get Utah into the Union and none of which succeeded.

The CHAIRMAN. All of which were matters of public record.

Mr. DE ARMOND. But there was no question raised by the other side, and the gentleman was allowed to pursue his own argument. My idea is, when the question is about a contract, that we should go first to the contract. That contract we did not have. Next, if there is any part of the contract which we can not understand, we should go to outside circumstances and facts. We had an hour and a half of outside circumstances and facts yesterday, and nothing of the contract.

The CHAIRMAN. I should have objected if the gentleman had undertaken to introduce anything except what was public record of Congress, printed by authority of Congress.

Mr. FREER. If there be no objection to the particular remarks, let us cross the bridge when we come to it.

Mr. LITTLEFIELD. Have you not a right to argue that we ought not to believe a witness? Why can he not argue specifically that every one of these witnesses is not entitled to belief, and then, whether we take any stock in his argument is for us to decide?

Mr. DE ARMOND. My contention is that there is no danger in the world of confusing his argument with testimony, because he has given no testimony and he is making an argument.

Mr. LITTLEFIELD. Certainly he has the right to take the ground that every one of these witnesses is not entitled to credit.

Mr. LANHAM. It is competent for him to comment upon the testimony—as to the weight of the testimony given by the different witnesses.

The CHAIRMAN. Entirely so.

Mr. DE ARMOND. Mr. Roberts is not a lawyer, and he may comment in a way that a lawyer would not.

The CHAIRMAN. Pardon me for interrupting; but he is enough of a lawyer to know that he has no right to state matters of fact within his own personal knowledge only as bearing upon the weight that the testimony ought to have. As I said some time ago, it is not especially important upon this matter of Dr. Wishard; but this indicates a method that he is entering upon. Whether he will do so or not I can not say——

Mr. DE ARMOND. I certainly can not.

The CHAIRMAN. But it is better we should have some understanding about it at this stage than to have it raised later.

Mr. DE ARMOND. One further remark as illustrating the latitude given in discussion. The lady who addressed us yesterday afternoon did it upon the theory that she appeared for the ladies of the United States, and while her discussion was a most interesting one, it was almost absolutely outside the record. Nobody had any disposition to make

any objection to her argument, and I do not suppose anyone is infused with the idea that what she said was testimony.

Mr. FREER. I think Mr. Roberts understands the suggestion. Let him go ahead.

Mr. ROBERTS. Mr. Chairman, I must say I thought I was within matters that were clearly indicated, to me at least, in the cross-examination of Dr. Wishard in regard to the relative position of himself and me; and I was through, and there is no other case of this description, that I know of, to arise.

Mr. MORRIS. This is in the record.

Q. Mr. Roberts has known you as a man bitterly opposed to the Mormon people, has he not?—A. No; he has known me as a man conscientiously opposed to the Mormon Church, but I have no bitterness in my opposition.

Mr. ROBERTS. And in addition to that I remember that reference was made to a debate that he and I had in the town of Nephi. The point that I want to urge upon that head was simply this, that Dr. Wishard was uncertain as to whether he had been introduced to Dr. Margaret Shipp Roberts as "the wife of B. H. Roberts" or as "Mrs. Roberts," and as he was in doubt as to which, I was very much in doubt, and I think there may be a fair inference that neither form of introduction may have taken place, for the reason, as appears from the cross-examination, that the two men were not upon friendly relations, and a man does not usually throw himself into the arms of one whom he knows to be as violently opposed to him as even the record would indicate this man was opposed to Mr. Roberts.

The next witness was Mrs. Dr. Miles. The substance of her testimony was that Mrs. Margaret Shipp Roberts had requested her, in the year 1897, I think it was, to change her name upon the physician's registry of Salt Lake and thereafter to forward any communications to her under the name of Mrs. Roberts. The question was asked, in cross-examination, if that was done at the instance of B. H. Roberts, and the emphatic statement was that it was not so done. Therefore that was an act not of B. H. Roberts but of Dr. Margaret Shipp Roberts. The only other point of the testimony given by that witness was that subsequently to this changing of names she was introduced in the office of Dr. Margaret Roberts to the Representative from Utah as "Mr. Roberts."

Mrs. McDougal in substance testified that in a journey from Salt Lake City to Pocatello, in Idaho, she had overheard Mr. Roberts introduce this same lady, Dr. Margaret Ship Roberts, as his wife once, and several times introduced her as "Sister Roberts." The journey was a night journey in a day coach with all its inconveniences, and did not indicate, I take it, the relationship of husband and wife between the parties further than might be inferred from this introduction, if it took place. It must be remembered in considering the weight of this testimony that, first of all, it is not established that B. H. Roberts was ever married to Dr. Margaret C. Roberts, so-called, and that the acts testified to before the committee do not, even if admitted as being true, establish the relationship of cohabitation, which is living in the habit and repute of marriage.

These parties are not described as being seen together in society anywhere. They are not found together taking their meals. Mr. Roberts at the hours of morning and night is not seen going to and from the

house. It is in testimony that he was seen once within half a block of the house of Dr. Roberts, but I sincerely hope that there was not any very serious harm in that; and once, I think, he was seen at the office of the doctor. They are not seen driving together; they are not at the theater together; they are not found in places of worship together, and it seems to me that if the member from Utah was the defiant, the flagrant, violator of the law that he is held out to be by those who are opposing him in the matter of taking his seat, that certainly some of the acts that would indicate the habit and repute of marriage ought to have been brought out in this testimony; and surrounded as he is, and so far as I can recollect always has been, by a flock of enemies, somebody ought to have been found who, in describing the relations of these parties, could testify to acts that would have amounted to the habit of associating together as man and wife, and not be confined to the kind of evidence that has been introduced in regard to the relationship of this lady and the member from Utah.

The CHAIRMAN. How do you account for your picture being in Mrs. Roberts's room?

Mr. ROBERTS. I don't know. If you would visit Utah you would find his picture in many homes.

The CHAIRMAN. I mean in connection with your introduction of her as your wife?

Mr. ROBERTS. I reply to the gentleman that I don't know how to account for it.

Those are the witnesses that testified as to the relations between Dr. Margaret C. Roberts and the member from Utah.

The third group of witnesses relates only to the alleged relationship between Celia Dibble Roberts and the member from Utah. These witnesses are T. J. Brandon and Ray F. Brandon. In this case the marriage of B. H. Roberts and Celia Dibble Roberts may be inferred, of course, from the court record in regard to the misdemeanor of 1889; but the testimony of the Brandons does not rise higher than to establish general reputation since that time. If the marriage of the parties previous to 1889 be conceded, then I hold that the acts that were specifically testified to by the Brandons do not amount to nor do they establish the existence of unlawful cohabitation since 1889.

The points of special testimony are to the effect that B. H. Roberts attended the funeral of a girl somewhere between the age of 12 and 14 years in the village of Centerville, and sat among the mourners on that occasion. Since the birth of that child took place previous to the pleading guilty in 1889, I can not conceive that there is any violation of the law in being found in attendance upon the funeral of a child who had departed this life under those circumstances. It is said that the headstone over the grave of the child bears the name also of B. H. Roberts.

Mr. LITTLEFIELD. What is the date of that; have you the date of the funeral, Mr. Roberts?

A. I don't remember the date of the funeral. It was about eighteen months ago, as I remember it Since these parties live, according to the testimony of the Brandons, within a quarter of a mile of the residence of Celia Roberts, and that home lies between their place of residence and their farm, as stated here by them, and that they passed and repassed that place often, it is rather peculiar that they could only testify that they had seen B. H. Roberts some time during the day at

that place, "not very often." The testimony of the elder Brandon was to the effect that he had not seen him there frequently. He had, however, seen him there once or twice. The testimony of the younger Brandon on the particular subject of Mr. Roberts being seen at the home of Celia Dibble Roberts, when sifted down on cross-examination, amounted to his having seen him there once, and that in the summer of 1898, in the daytime. The other item of the testimony is that the member from Utah furnished a home for this lady. Relative to the birth of children in the family, all these men could testify to was the general reputation that existed in the neighborhood, that such births had taken place.

In this case, as in the case of Dr. Margaret Shipp Roberts, these parties, B. H. Roberts and Celia Dibble Roberts, are not seen associating together as man and wife, they are not seen driving together, they are not seen in society, they are not seen at theaters together, they are not at church together, except in this one instance of the funeral. There is no testimony before this committee that goes to show the habit and repute of marriage between these parties. The testimony, if you may dignify it by such a name, rises not above the matter of general repute, and I take it that it is no wonder that the courts in Utah refused to prosecute upon testimony of this description. Here let me say that it appears in the testimony, as offered by Mr. Owen, that a complaint had been filed in Davis County, the county where Celia Dibble Roberts resides and where B. H. Roberts resides—a compliant is filed before the prosecuting attorney of the county, and a whole list of names was given, names of witnesses in that case.

It is one of the complaints, nay, I may say it is one of the wails, of the parties who are hounding the member from Utah up to this point, and trying to prevent him from taking his seat, that the officers in that county refused to prosecute for adultery in this case; and, I take it, for the very good reason that there was not sufficient evidence before them upon which to institute the prosecution. And if they could not succeed there, before the courts of the State where all the witnesses could be examined, it seems a rather odd thing to me that it should be entertained before this committee in the course of this investigation.

Relative to the fourth group of witnesses——

Mr. McPherson. You say the courts of Utah hold that repute is not evidence?

Mr. Roberts. No, sir; I did not say that.

Mr. Littlefield. What is your view as to that—of reputation as tending to establish marriage?

Mr. Roberts. General reputation?

Mr. Littlefield. Yes.

Mr. Roberts. I think it not sufficient.

Mr. Littlefield. What do you think of Greenleaf's suggestion on that point?

Mr. Roberts. I am not acquainted with that.

Mr. Littlefield. You don't know the author?

Mr. Roberts. No.

Relative to the testimony of E. A. McDaniel, and also Mr. Arthur McEwen, their statements amount to nothing more than a reputed conversation with the member from Utah, and I hold is not testimony proper or sufficient to establish his guilt in the matter charged.

Mr. Littlefield. That is, the member's admissions are not competent?

Mr. ROBERTS. No, sir; and in this instance they are not specific at all.

Mr. LITTLEFIELD. You do not have any authority for that, I suppose?

Mr. ROBERTS. No, sir. This testimony amounts merely to the general reputation, and the specific acts testified to in both cases fail, in my judgment, to establish habit and repute of marriage; and it must be remembered, and I have already called attention to that point, that all along the member from Utah has been heralded as a flagrant, open, and defiant transgressor of the law. Here in this memorial, submitted by the opposition to Congress, on page 2, it is said:

> Your memorialists specifically allege that the said Brigham H. Roberts, since the expiration of his term of imprisonment for said crime, has openly and defiantly continued to live in unlawful cohabitation with more than one woman, and has ever since that date been, and is now, a polygamist, and since his said discharge from the penitentiary said Brigham H. Roberts has contracted a third polygamous and bigamous marriage.

It will be just a little interesting to find out when and where and with whom that third polygamous and bigamous marriage had taken place. I challenge name, place, and all there is connected with it, because it is not true in any particular.

The CHAIRMAN. This is the first time that I have ever heard that you had been charged with a fourth marriage.

Mr. ROBERTS. With a third polygamous marriage.

The CHAIRMAN. That would be a fourth marriage. I didn't know that you had been so charged.

Mr. ROBERTS. This is, however, the charge; and I call the attention of the committee to this—that this is one of the methods by which the excitement in this country has been aroused. It has been by making just this kind of false accusations. And it has appeared in the press of the country——

The CHAIRMAN. That is, there is a legal or moral distinction, in your opinion, between marrying three times and marrying four times?

Mr. ROBERTS. I don't understand what you mean by that.

The CHAIRMAN. I understand you to say that the spirit has been aroused against you because you have been charged with marrying four times instead of only three times.

Mr. ROBERTS. You will observe this. It is said:

> The said Brigham H. Roberts, since the expiration of his term of imprisonment for said crimes, has openly and defiantly continued to live in unlawful cohabitation with more than one woman, and has ever since that date been, and is now, a polygamist.

It is merely a false statement, which shows the general unreliability of these parties who are making these statements. And this is then followed by the paragraph which continues that I have never taken the oath of allegiance to this country. That, however, was merely by the way.

> He has openly and defiantly continued to live in unlawful cohabitation,

and then in the latter part of the next paragraph, on page 3:

> At the time of the issuance of the governor's certificate of election to him he was, and now is, a bigamist and polygamist, and living in unlawful cohabitation with more than one woman, and prior to his said nomination and election had, and ever since has, continued and still continues to do the same, in open and flagrant violation of such compact.

That is, referring to the compact between Utah and the United States.

And therefore the said Brigham H. Roberts is ineligible to membership in the House of Representatives.

The point, Mr. Chairman, I had in mind, in referring to these statements, is that the open and flagrant violation of the law and the defiant violation of it nowhere appears in the testimony that has been produced before this committee; and I hold that it is a little unfortunate for those who have introduced this testimony that they could not sustain the more open and flagrant violation of the law than appears in any act to which they testify.

The CHAIRMAN. I want to ask you a question there, because I want to understand what is your meaning of this statement. Suppose it should appear to the satisfaction of the committee that you had three wives, and that you had been cohabiting with them, within the definition of that term by the Supreme Court of the United States, ever since your marriage to them—do you construe that that would be in defiance of law?

Mr. ROBERTS. If it was established it would be.

The CHAIRMAN. If it were established?

Mr. ROBERTS. Yes, sir.

The CHAIRMAN. That you had married three wives and that you had been living with them?

Mr. ROBERTS. It would be in defiance of the law, true; but here is the question in relation to flaunting that relationship and flagrantly living in violation of the law that these people undertook to establish.

The CHAIRMAN. Suppose that you introduced these women as your wives, and reared children, would that be in violation of the law?

Mr. ROBERTS. That is a question I do not admit.

The CHAIRMAN. Supposing that.

Mr. ROBERTS. I am not supposing. I would be pleased to continue my argument.

The CHAIRMAN. I do not wish to disarrange your argument, nor interfere with you, and I beg your pardon for having interrupted.

Mr. ROBERTS. If the vindication of law had been the object of those who now for some eighteen months have been pursuing the member from Utah, they have had ample opportunity for doing that without coming all the distance from Utah to Washington to accomplish it. The agitation on this subject against the member from Utah began at least in September, 1898, and continued during the campaign of 1898. It appears in evidence here that the Brandons had given affidavits to the gentleman who made the argument for the opposition yesterday, as early as the 13th of February, 1899, in the case of Celia Dibble Roberts; and, as I have remarked, they undertook the prosecution later—that is, in the month of October—to establish a case of adultery in that county. But here were men holding these affidavits from the 13th of February, 1899, and no action was taken against the member from Utah. Yet, he was pursuing his daily avocations, was within easy reach of the law. The affidavit of Dr. Miles bears the date of the 27th of February, 1899, and the affidavit of Mrs. McDougall was made as early as May 27, 1899. The purpose, however, of these parties, I wish to show.

The CHAIRMAN. If it will not interrupt you to stop here, unless you can finish your argument within a reasonably short time, perhaps we had better take a recess.

Thereupon, at 12.40, the committee took a recess until 2 o'clock p. m.

AFTER RECESS.

Mr. ROBERTS. Mr. Chairman, it has been my contention before the committee on previous occasions that the parties who have sought to prevent me from taking my seat in Congress should come here with a court record establishing the commission of any crime alleged against me, or this committee should refuse to entertain the objection urged upon any other evidence of misdemeanor or other crimes.

I therefore admit the court record that established the fact of my having pleaded guilty to unlawful cohabitation in 1889, and my contention has been that if it was the intention to fix upon me any subsequent violation of law before this committee, it ought to be done by the like production of a court record showing that the member from Utah had been convicted before a competent court and after due process of law. My contention has been and now is that the committee ought not to have considered the testimony of the witnesses who have testified before the committee for the reason that if they were in possession of evidence that would lead to the conviction of the member from Utah, they had ample opportunity to present that testimony before the courts of Utah and secure a conviction against the member. I call attention to the fact that it can not be argued in bar of that contention that the courts of Utah are so friendly to the member from Utah that the opposition could not secure a conviction or that the complaints would not be entertained.

The facts in relation to that matter are that out of the nine district courts of the State of Utah seven are presided over by judges who are non-Mormons, and the greater number of prosecuting attorneys in the respective counties, with whom information can be filed, are also of different religious faith to the member from Utah. The supreme court of the State of Utah is made up entirely of men who are non-Mormons. So that it can not be urged, I take it, that because of the religious prejudice of the courts, they would not entertain cases of the kind charged against the Representative from Utah. And in Salt Lake County, where the offense with Dr. Margaret C. Roberts is alleged, the prosecuting attorney is a non-Mormon, and also all the judges before whom the matter would be tried are non-Mormons.

It is proper to say, I think, in explanation of the situation, that when the information or rumor reached myself that I was charged with the crime of adultery in Davis County I was in New York; that when I learned an effort was being made to have me accused or indicted for the crime of adultery I at once wrote to the prosecuting attorney before whom complaint was made and expressed entire willingness on my part, if he should find it necessary in the course of discharging his duty to issue such a warrant against me, to immediately return to the State to answer, and as part of my remarks, if admissible, I would read the letter that I wrote to him on that occasion.

The CHAIRMAN. It certainly is not admissible with any propriety, but I have no objection to your reading it.

Mr. LITTLEFIELD. What is this letter?

The CHAIRMAN. It is the letter he wrote to the prosecuting attorney about prosecuting him.

Mr. LITTLEFIELD. It is on this proposition that he has not been indicted?

The CHAIRMAN. Yes.

Mr. ROBERTS. The body of the letter is as follows. This a copy of it:

50 CONCORD STREET,
Brooklyn, N. Y., October 24, 1899.

WILLIAM STREEPER, Jr.,
Centerville, Utah.

DEAR SIR: I see from dispatches in New York papers that charges are to be made against me before you for an extraditable offense. I write to say that if you find it necessary in order to discharge your official duties to issue a warrant for such an offense against me it will not be necessary for you to get out extradition papers, as I will at once return to Centerville if you will inform me of your action.

Mr. J. H. Moyle is my attorney, and if you will have him informed of the issue of any warrant of the kind mentioned he will wire me and I will start immediately for Utah, as I hold myself amenable to the law of my country. My home and my fortunes are permanently established in Utah. There is no fear of my fleeing from justice, and no necessity for Utah officers of the law to get out extradition papers for me and thus add weight to the sensation that is trying to be worked up over what is called the "Roberts case."

Very truly, yours, B. H. ROBERTS.

A similar letter was written also to the prosecuting attorney of Salt Lake County. It is stated in the public prints of Salt Lake City that a warrant for my arrest was actually issued, but it was immediately recalled by the officer issuing it, and that is the status of the matter in Salt Lake City on that particular subject.

I call attention to these facts in order that it may be understood that if these parties had evidence sufficient to warrant my arrest and trial before a court of competent jurisdiction they had ample opportunity to proceed, and this they did not do. The reason why they did not do it was simply because it would not serve the purpose for which they were working ulteriorly. I undertake to say that the real object of this whole crusade is not so much against the member from Utah at it is the accomplishment of said ulterior purpose, to which I shall in the course of my argument call attention. Perhaps the real object of this crusade may be judged somewhat from a statement that appears in the Salt Lake Herald of December 1, 1899, by Mr. V. S. Peat, who was a traveling agent for the Bear River Land, Orchard, and Beet-Sugar Company. The article goes on to say that he is not in sympathy——

Mr. MIERS. Was that introduced in evidence?

Mr. ROBERTS. No, sir; I do not think so.

The CHAIRMAN. Unless the committee order that to be read, and it would not be evidence, I shall not consent to its being done.

Mr. ROBERTS. I read it as part of my argument. I am not reading it as evidence.

The CHAIRMAN. Very well; you ought not to read it.

Mr. ROBERTS. Then I ought not to make an argument.

The CHAIRMAN. You can argue in your own way.

Mr. ROBERTS. I submit this, Mr. Chairman: Suppose instead of representing myself here before the committee I was represented by counsel. Would it be competent for the counsel to read such matters as part of his argument?

The CHAIRMAN. Mr. Roberts, the committee has been very grievously handicapped by the fact that you have not been represented by counsel. We all agree to that, and many things that you have already read would not have been read if you had had a counsel learned in the law to represent you, familiar with these practices. We do not criti-

cise you for any efforts you have made to present things in a regular way, and the committee has allowed you to go even outside what would have been allowed if you were here as a practicing lawyer, presumed to be familiar with the methods of procedure in courts. The objection to that is rather that it is not here before us at all. It would take some time to read it, and surely it ought not to be printed with the argument in the case, for it is no argument. I have no disposition to in any way limit your argument within any sort of bounds that any member of this committee may think you ought to travel over.

Mr. ROBERTS. I wish to say that I have quite a number of articles or references to read bearing on the matters I desire to discuss, and it materially handicaps me in the presentation of this case to say that I am trying to introduce evidence.

The CHAIRMAN. That is what it is, and that is what it amounts to. Now, the committee is here trying the question of fact only. What may be the ulterior purpose of some other people, or of all other people, is a matter of absolutely no concern to this committee. It is undertaking to find out whether or not you are, or have been, a polygamist, violating the law respecting polygamy. That is the only question that this committee is considering. Then, as growing out of that, is the legal effect of such facts as the committee may find to have been proven; and if what you say be true, Mr. Roberts—if the initiation of this crusade, as you call it, was of the character that you describe, if it had no proper motives, if not a person who pressed it was animated by any public spirit that ought to be recognized—it yet would not change by one jot or tittle the character of the responsibility there is upon the committee.

Mr. ROBERTS. Mr. Chairman, it seems it to me that a proper course of argument is to show that these parties who come here with this cause are unworthy of consideration by reason of having other motives.

The CHAIRMAN. There is no person here with any cause at all that we know of. There are some witnesses who have testified. If you have any testimony that bears upon their credibility, undoubtedly that would be proper; but as to whether or not any people who may be back of them, as you assume, are animated by any proper public spirit is to the last degree unimportant. If we were settling this solely on a matter of public sentiment it would be very easy to settle it.

Mr. ROBERTS. I am not appealing to public sentiment at all.

The CHAIRMAN. In your argument now you are presenting new facts. They have not any proper foundation.

Mr. ROBERTS. I would ask the decision of the committee on that subject.

The CHAIRMAN. What is it you desire now to do, Mr. Roberts?

Mr. ROBERTS. I desire to show, if I can, that this crusade that has swelled up the petition that is now before Congress to exclude me from my seat is an unworthy sectarian movement, and for that reason the parties concerned ought not to receive consideration at the hands of this committee.

The CHAIRMAN. How long will it take you to pursue that line of argument?

Mr. ROBERTS. I can not say as to that.

Mr. LITTLEFIELD. What is the article which you now wish to read?

Mr. ROBERTS. It is the statement of a gentleman——

Mr. LITTLEFIELD. A newspaper article?

Mr. ROBERTS. Yes.

Mr. LITTLEFIELD. What newspaper, and when was it published?

Mr. ROBERTS. The Salt Lake Herald, of December 1, containing a statement of a gentleman who had a conversation with some of the parties who are actively interested in this case as to the reason why they did not prosecute me before the courts of Utah when they had ample opportunity and time to do that.

The CHAIRMAN. The questions of fact will be discerned by every member of the committee. That could be testified to by Mr. Roberts if he so desired, and upon which we put no limitation whatever.

Mr. ROBERTS. I call the attention of the committee to the fact that I suggested that a number of gentlemen in Washington should testify before the committee as to the general facts and conditions existing in Utah, and that was not allowed.

The CHAIRMAN. You will discover that that was not the situation at that time if you will read the colloquy in the record. You were distinctly asked if you wanted to call them later.

Mr. ROBERTS. But I called attention to the fact that those gentlemen who were here, ex-Senator Brown and Mr. Glassman and Mr. Dunbar, would testify, and I was informed that if they were going to testify as to general conditions, it was not necessary for them to stay. They could not testify in reference to anything particular as to myself. I stated that.

The CHAIRMAN. The examination was confined, and has been kept, within that limit—to those things which related to yourself personally.

Mr. LITTLEFIELD. It is only a question of taking up time; is not that the question, as far as we are concerned?

The CHAIRMAN. It may and it may not be.

Mr. ROBERTS. Gentlemen of the committee, I do not wish to make myself offensive before this committee, and I am willing to waive this matter if you desire that I should waive it. It may not be material to the points at issue. I can not say altogether as to that, but I would like a decision with reference to matters of this kind so I will know how to conduct myself in the rest of the argument. I can waive that, if you like and go to the consideration of another proposition bearing immediately upon this question, only I would ask that the interruptions to my argument be as few as they reasonably can be.

I take up next, then, the proposition, Mr. Chairman, Would the misdemeanor of unlawful cohabitation (for with nothing more is the Member from Utah charged before this committee), even if proven, constitute a disqualification for the office of Congressman?

Now, this leads us to the consideration of the effect of having pleaded guilty to the misdemeanor of unlawful cohabitation in 1889. The Edmunds law made the misdemeanor of unlawful cohabitation a disqualification for office. The 8th section of the Edmunds law reads as follows:

> That no polygamist, bigamist, or person cohabiting with more than one woman, and no woman cohabiting with any of the persons described as aforesaid in this section, in any Territory or other place over which the United States have exclusive jurisdiction, shall be entitled to vote in any election held in any such Territory or other place, or be eligible for election or appointment to, or be entitled to hold any office or position of public trust, honor, or emolument in, under, or for any such Territory or place, or under the United States.

The question to be considered is whether the disqualifying features of this Edmunds law now disqualify the member from Utah. In other words, it is contended here that since 1889 he has continued in the

offense of this misdemeanor of unlawful cohabitation, and, so far as I am able to judge of the argument presented, it seems to be contended that since the offense has continued (making that statement for the sake of argument only) that therefore the disqualifying clauses of this Territorial law apply now to the member-elect from the State of Utah—that the wall of statehood, in other words, acts as no barrier to the continuation of the disqualifying clauses of this Edmunds law. I call the attention of the committee to the fact that this whole law was made only for the Territories of the United States and for other places over which the United States has exclusive jurisdiction.

The first section provides that "every person who has a husband or wife living in a Territory or other place over which the United States have exclusive jurisdiction who hereafter marries," etc., shall be guilty of polygamy. And so with the clauses creating and defining the offense of unlawful cohabitation, and so with this 8th section, that defines the political disqualifications attendant upon violation of that law. The operation of the whole law is limited, of course, to the Territories of the United States and other places over which the United States may have exclusive jurisdiction. I scarcely know how to proceed with an argument to establish the fact that laws of the United States—laws made for and operating in a Territory only—when that Territory becomes a State cease to operate within the boundaries of that State.

It seems to me that you might just as well undertake to argue that the sun shines sometimes. It is a proposition that is sustained by the whole history of the admission of the Territories of the United States as States. Whenever the Territory becomes a State every United States law enacted for the Territory, and which previously operated in that Territory, ceases with statehood; and only such United States laws operate in the new State as operate in every other State. The new State—every State—is admitted upon an equal footing with all the rest of the States, and is free from the previous United States laws applicable only to the Territories or other place over which the United States has exclusive jurisdiction.

The CHAIRMAN. Before you leave that particular phase—I don't want to inject it here necessarily, but I want to call attention to a point that has been made in that connection that was not adverted to by Mr. Schroeder, and which ought to be called to your attention before you leave it, so you will have an opportunity to comment upon it. I mean as to the effect of section 8 of the Edmunds Act. I do not want to interrupt you, however, if you have not gotten to a point where you can well be interrupted.

Mr. ROBERTS. I wish you would state it now.

The CHAIRMAN. It is this: Section 8 of the Edmunds Act makes ineligible for election or appointment to, or to be entitled to hold, any office or place of public trust under the United States. The Supreme Court of the United States has defined, if you will remember, what is meant by a polygamist is one who has more than one wife, and maintains the status of husband and wife irrespective of the matter of sexual intercourse, and that a polygamist is therefore one who has that status. It is a condition that inheres in him. He is a polygamist who has more than one wife. Now, if the committee should find, for instance—and I use this merely to illustrate the point that was made—that you have two or more wives, and in the sense in which the Supreme Court has defined the word "polygamist" that you are a polygamist in the

State of Utah, or would be if Utah were still a Territory—and section 8 would unquestionably apply in that case and you would be a polygamist in the Territory—and that you come to the District of Columbia, which is a Territory over which the United States has exclusive jurisdiction, and in which alone the Congress of the United States has exclusive jurisdiction, and in which alone the Congress of the United States can sit and have its being, whether it is the place that you have your two or more wives or not, whether they are in a State or in a Territory—I ask you whether when you put your foot on that soil over which the United States has exclusive jurisdiction you do not take with you, and there does not inhere with you on that soil, the status of a polygamist, and are you not a polygamist? And therefore if the statute could be passed at all, if Congress has authority to pass any such law, would not a person in such a situation become ineligible either for election or to hold office?

Mr. ROBERTS. But could he be a candidate in the District of Columbia for Congress?

The CHAIRMAN. But the peculiarity about the Edmunds law, which was applied to Mr. Cannon's case in 1882, was this, that he could not hold office. And the point made in this case would be whether you would be eligible to hold office within the District of Columbia, a District over which the United States has exclusive jurisdiction. Now, I express no opinion upon that at all, but have called it to your attention now, as it would not be called to your attention before you concluded your argument if I did not do so.

Mr. ROBERTS. I think I have anticipated some such an argument as that. I was about to refer to the fact that, notwithstanding the new condition for the former Territory of Utah, Statehood had, in my judgment, materially changed the position of a Representative coming from that former Territory. The chairman of this committee, who drew the indictment upon the floor of the House against the member from Utah, seemed to hold at that time, as he apparently now holds, that the disqualifying clause of the Edmunds law, now ineffective, operates upon the member from Utah; and that statement is to be found in the Congressional Record, No. 1, page 5. The gentleman from Ohio said:

> If this transcript and these affidavits and papers tell the truth, the member-elect from Utah is, in my judgment, ineligible to be a member of this House of Representatives, both because of the statutory disqualifications created by the Edmunds law and for higher and graver and quite as sound reasons.

And that was the main line of argument, or one of the main lines of argument, that was followed here yesterday afternoon—an attempt to so construe the old Territorial law as to make it operative now upon a member of the House from a State. It seems to me that the test of that matter would be: We will suppose a man coming from the State of Ohio. That is, of course, just by chance. We could not conceive it possible for any such thing to happen from the State of Ohio; but we will suppose that a polygamist came from the State of Ohio. Would the disqualification sought to be shown as operating upon the member from Utah be operative upon a polygamist if he should come from the State of Ohio?

The CHAIRMAN. Undoubtedly. If there is any force in the position I took, if he was a polygamist, the Edmunds law would operate upon him when he came upon the soil over which the United States had exclusive jurisdiction.

Mr. ROBERTS. Now, upon that matter I wish to offer such exposition of this Edmunds law as I am able to present to the committee.

I contend, first, that this Edmunds law was made for and is operated only in Territories and other places over which the United States has exclusive jurisdiction, not elsewhere—not in a State. In Territories officers are of two kinds, first, Territorial officers, such as justices of the peace, members of the legislature, etc.. and second, United States officers, such as district judges, United States marshals, etc.

The meaning of the eighth section of the Edmunds law is that persons guilty of polygamy or unlawful cohabitation are ineligible—

First, to hold office under the Territories; that is, Territorial officers.

And second, to hold offices under the United States in the Territories; that is, to be United States officers in the Territories.

The Edmunds law and its disqualifications do not apply to United States officials outside of the Territories or other places over which the United States has exclusive jurisdiction.

But now we come to the point that is directly raised by the remarks of the chairman here. If it is held that a Representative is an officer "under the United States," and that therefore the Edmunds law applies to him, no matter where he comes from, the answer to that contention would be that a Representative is not an officer under the United States within the meaning either of the Edmunds law or of the Constitution. I call attention to the language of the Constitution with reference to a Representative to the United States Congress. Paragraph 2 says:

> No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States which shall have been created, or the emoluments whereof shall have been increased, during such term, and no person holding any office under the United States shall be a member of either House during his continuance in office. (Article I, section 6, of the Constitution.)

I call attention to the fact that the language is not, "and no person holding any 'other' office under the United States," and by the omission of the word "other" at this point proves that neither a Representative nor a Senator is an officer of the United States within the meaning of that clause of the Constitution.

And again, in Article II, section 1:

> But no Senator or Representative or person holding any office of trust or profit under the United States shall be appointed an elector.

You will notice again that the Senators and Representatives are by that language excluded as being among the officers of the United States.

I call attention next to the Blount case, in which it was held that a United States Senator was not an officer of the United States. It will be remembered, of course, that about one hundred years ago how the Blount case came up before the Senate on a matter of impeachment. Mr. Blount was brought to trial in December, 1798, on impeachment before the Senate for high crimes and misdemeanors. In reference to that case Justice Story, in section 793 of his work, makes this ference:

> The question arose upon an impeachment before the Senate in 1799, whether a Senator was a civil officer of the United States within the purview of the Constitution, and it was decided by the Senate that he was not. (Senate Journal, 10th January, 1799.)

And [Mr. Justice Story continues] the like principle must apply to the members of the House of Representatives.

This decision, upon which the Senate itself was greatly divided, seems not to have been quite satisfactory, as it may be gathered, to the minds of some learned commentators. The reason by which it was sustained in the Senate does not appear, their deliberations having been private, but it was probably held that civil officers of the United States are such as derive their appointment from and under the National Government, and not from the States or the people of the States.

In this view the enumeration of the President and the Vice-President of the United States as impeachable officers was indispensable. They derive their authority from a source paramount to the National Government, and the clause now under consideration does not even consider them officers of the United States. It says: "The President and Vice-President and *all civil* officers shall be," etc., not "*all other*" civil officers. The language of the clause, therefore, would rather lead to the conclusion, would indicate, that they were enumerated as contradistinguished from, rather than included in, the description of the civil officers of the United States.

Other clauses of the Constitution would seem to favor the same result, particularly the clause respecting the appointment of officers of the United States by the Executive, who has to commission "*all the officers* of the United States," and the sixth section of Article I, which declares that "no person holding office under the United States shall be a member of either House during his continuance in office;" and the first section of Article II, which declares that "no Senator or Representative, *or other person* holding an office of trust or profit under the United States, shall be appointed an elector," etc.

The passage is from Story on the Constitution, fifth edition, pages 577 and 578, section 793.

If Judge Story is right—and I take it he is—in concluding that the Senate rightfully refuse to consider a United States Senator an officer under the United States within the meaning of the Constitution, then with more emphasis could the contention be made that a member of the House of Representatives, both from the nature of his election and of the part that he takes in the Government, is not an officer under the United States; because a Senator may take part in the ratification of treaties, which a member may not, and a Senator joins with the Executive in the approval of certain officers that are to be appointed by the Executive of the nation, whereas a member of the House is much further removed from association with duties of that character.

I call the attention of the committee to the fact, too, that in the case of resignation the Representative does not resign to the President of the United States, nor to any United States authority. He tenders his resignation to the governor of the State and the people from which he comes, from whence he derived all his authority. It was contended here by counsel yesterday that a member of the House must be a United States officer, within the meaning of the Constitution, because he receives his remuneration from the United States. But in that case I take it that the United States is but acting as the agent of the people in the matter in paying these men, who are the Representatives of the people from the various States; and I can see no special weight in that contention. I think that if you try to find whose agent a person is, it is proper to go to the parties who commission him, who elect him, and who confer upon him the sign of his office and of his authority, and to whom, in the event of the necessity arising, he tenders his resignation—all of which occurs, of course, within the State from which he comes, and not to the United States.

With this explanation of the operation of the eighth section of the Edmunds law it seems clear, to my mind at least, that the disqualifying clauses of that section do not operate upon a person who is a member of the House of Representatives, for the reason that he is not an

officer under the United States within the meaning of the Edmunds law; and I come to that conclusion for the reason that I think it is established that he is not an officer under the meaning of that term as it appears in the Constitution, and hence, also, not an officer under the United States within the meaning of the phraseology of this Edmunds law.

I next call attention to the fact that the State of Utah did not continue the disqualifying clauses of the Edmunds law; that while into the State there has been brought a law which defines and punishes the crime of polygamy and which also defines and punishes the crime of unlawful cohabitation, it has nowhere continued the disqualifications prescribed in the Edmunds law; and I think that it is admitted here and does not require the reading of the State law upon that head. So if these disqualifying clauses of the Edmunds law do not operate upon the Congressman from Utah, and if the State of Utah has not continued these disqualifications, then it follows that there are no disqualifications which operate upon the member from Utah.

The disabilities, moreover, of this Edmunds law, which would have operated upon the member from Utah, provided Utah had continued a Territory and he was a Delegate to this House of Representatives, even then might have been removed, in my judgment, by several processes, and I merely mention them now, as I shall discuss them more in detail later on.

Mr. MORRIS. Do you think that would have applied to a Delegate from Utah?

Mr. ROBERTS. If he had been convicted before a court? Yes.

Mr. MORRIS. Do you think he would have been an officer under the United States?

Mr. ROBERTS. He would at least have been an officer by United States law, and hence an officer of the United States.

Mr. MORRIS. Would he have come under that eighth section of the Edmunds law? In other words, under the eighth section of the Edmunds law could a man who was a polygamist or living in unlawful cohabitation have been qualified to be a Delegate in Congress?

Mr. ROBERTS. You ask if he could be?

Mr. MORRIS. What your idea is about it is what I asked.

Mr. ROBERTS. Let me get your question first. You asked if he could be?

Mr. MORRIS. Would the fact of his being a polygamist or living in unlawful cohabitation disqualify him from being elected a Delegate?

Mr. ROBERTS. If a conviction against him was had I think it would.

Mr. MORRIS. And otherwise not?

Mr. ROBERTS. Yes, sir; otherwise not

Mr. LANDIS. You say the Delegate would be a United States officer because created by a United States law?

Mr. ROBERTS. He is a Territorial officer.

Mr. LANDIS. I understood you to say a United States officer.

Mr. LITTLEFIELD. I suppose the distinction he has in his mind is that one is provided for by the Constitution and the other provided for by law.

Mr. ROBERTS. Yes, sir; that is right.

Mr. MORRIS. As I understood you, you argued that the eighth section of the Edmunds law did not apply to your case, because as a member of the House of Representatives you would not be an officer under the United States.

Mr. ROBERTS. That is right.

Mr. MORRIS. Now, is it your idea (and I am asking simply for information and for your own view of the matter) that a Delegate from the Territory of Utah would have been an officer under the United States?

Mr. ROBERTS. No, sir.

Mr. MORRIS. Within the meaning of that statute?

Mr. ROBERTS. No, sir; but he might have been disqualified by the operation of this law providing a conviction had been secured against him.

Mr. MCPHERSON. I do not want to annoy you with questions, but in that connection my mind is running to two propositions: First, as an officer of the United States, what you are discussing; second, to the language of the Edmunds law, section 8, which reads: "Or be entitled to hold any office or place of public trust." Would a Representative in Congress be a place of public trust? The Edmunds law says, "any office." You say a Representative in Congress is not that?

Mr. ROBERTS. "Or place of public trust." My point is that the law has reference to United States officers acting within territories and places over which the United States have exclusive jurisdiction, and that the Representative—whatever becomes of the Delegate it is not a matter before us to be considered—that it does not operate on the Representative from the State of Utah or any member from any State.

Mr. MCPHERSON. But what I was trying to get at is this: Is a Representative in Congress a place of public trust under the United States?

Mr. ROBERTS. Not within the meaning of the section of the Constitution.

The CHAIRMAN. But under the section of the Edmunds law——

Mr. MCPHERSON. That is what I am talking about.

Mr. ROBERTS. If he is not an officer under the United States under the Constitution, certainly he is not under the section of the Edmund's law.

The CHAIRMAN. Don't you think the statute to have a different meaning from the Constitution?

Mr. ROBERTS. I think if it has any weight it derives it from the definition that clings about the phraseology in the clause of the Constitution.

I was proceeding to state that even if it were contended that disabilities once existed against the member from Utah under Territorial conditions they were liable to removal:

First, by the amnesties of the Presidents of the United States.

Second, by the act of Congress and the President, whose law created the disabilities, and afterwards by the enabling act; and,

Third, by the action of the State of Utah when she established the qualifications of her electors. That leads me to the consideration of the question whether the disabilities which were once in force upon the member from Utah have been removed. These disabilities, if they were not removed, operated, of course—at least as long as Utah was a Territory—from 1889 to January 6, 1896.

The CHAIRMAN. That is assuming that there was no violation under the last amnesty.

Mr. ROBERTS. I will come to the consideration of the effect of those amnesties in a moment, and I think the statement I now make will be

covered by the subsequent argument upon that question. The first amnesty proclamation was issued by President Harrison in January, 1893, and the amnesty proclamation by Grover Cleveland was issued in September, 1894. I call the attention of the committee to the fact that there is nothing in these proclamations that required a person to make any formal renunciation of the relationship that he had been living in during the past.

Of course, it is stated in the amnesty proclamations that a person can only take advantage of that amnesty by having observed the law; but he is not required, for instance, to set the town crier at work and assemble the people and make proclamation that the polygamous relations that he has hitherto sustained with this one or that one, are from henceforth discontinued. He is not required to go before any court and make any affirmative or negative movement in regard to releasing himself from that relationship, that status. He could not go before the courts and do that because the women in question have no legal status before the courts.

There is no way by which a divorce could be obtained from a polygamous wife in the Territorial court, or in the State courts of Utah, or elsewhere, so far as I know. The contract having been void when contracted, there simply is no legal contract existing, and consequently there was no means existing by which a person could, or was required to, publicly renounce those relations, and no one in the Territory or State of Utah ever did, and if the benefit of these amnesty proclamations is dependent upon some public action severing those relations, then they have never applied to any single individual in the State of Utah at any time.

So the question arises, How are you to judge of a person having complied with the terms of these amnesties? I know of no other way than to assume that if there has been no accusations made before the courts, or prosecution instituted before the courts against a person for violation of the law; and there are no convictions on record of violation of the law, the fair presumption is that the law has been observed; and hence the amnesty provisions of these proclamations would rest upon the man who had hitherto been disqualified by the operations of that law. And there is no other way of arriving at that fact. Another thing would demonstrate it, and that is, has the individual in question enjoyed the advantages that would come from a release from the previously existing disqualifications. If he has, and it has been public and notorious, then I take it you have evidence that he has complied with the requirements of the amnesty proclamations.

Now, in that status how stands the Representative from Utah? It is a fact that there exists from 1889, the time he pleaded guilty to the misdemeanor of unlawful cohabitation, to the time of statehood, in 1896—there appears no accusation against him before any of the courts with reference to his having violated the Edmunds law; and there is no conviction between those dates when the law was operative in the now State of Utah. It is a matter of evidence here, too, that the member from Utah, while Utah was a Territory, enjoyed the benefits of the amnesty proclamations, in this:

In the autumn of 1894 he voted, and was elected a member of the constitutional convention of the Territory of Utah. That was in the fall of 1894, soon after the proclamation was issued by President Grover Cleveland. He helped to form the Constitution of the State while Utah was still a Territory. Again, in the fall of 1895, he voted

for the Constitution and the first set of State officers, while Utah was still a Territory. He also ran for Congress in 1895, while Utah was a Territory, but with his party was defeated. And all this without complaint from any quarter whatsoever that he had been a violator of the Edmunds law. The agitators on this subject have even been at the pains to dig up the oath—and, as I remember, presented it here in evidence—to the effect that in the fall of 1895 he took the oath prescribed and voted for State officers.

Well, under all these acts, and from the fact that there was no accusation made against him before the courts in all these years, and that he engaged in all these public duties of voting and office holding in the Territory of Utah and assisted in framing the fundamental law of the State, and also being the nominee of a party for election to Congress, without complaint about his marital relations, I take it you have in those circumstances very substantial evidence that the amnesties of the Presidents of the United States operated upon this man; because he had not violated the law, and I ask you to take into account the further fact that he was a man very much opposed; that he had his enemies in the State; that he was engaged in religious controversies and political controversies and had enemies on every hand who would have been only too willing to have taken advantage of any slip of his that might have appeared that would have rendered him an object of prosecution before the courts of the Territory of Utah.

I call attention further to the fact that during the continuation of the Territory every Federal official was a non-Mormon; all the judges of the courts were non-Mormon; the United States district attorneys in the State were non-Mormon, and there was also an active crowd of sectarian bigots who were ever anxious to make other people be good. The heel of the member from Utah would only too gladly have been caught by the many who were watching him for many years. So that it comes a little too late for the men who follow me to the threshold of the House of Representatives from the State of Utah, to say that the disqualifications of the Edmunds-Tucker law are still clinging to me. I understood the gentleman who offered the argument for the opposition yesterday to say that the test of this matter—that is, as to whether the once impaired citizenship of the member from Utah was ever mended or not—would be to ascertain if he could go to any other Territory or State and exercise the elective franchise and the privilege of office holding. Why, he need not submit it to any such test as that. I exercised these rights in the Territory of Utah where I was known, and that without any question from anybody or from any source. And there is an entire absence of even accusation, to say nothing of conviction, with regard to these offenses. I think that that operates to this day.

If this committee shall take the view, in opposition to the contention that I have made, that a Representative is a United States officer, and that in leaving his resident State, the State which he represents, and stops here temporarily, on the soil over which the United States has exclusive jurisdiction, that therefore a member of Congress comes under the disqualifying clauses of the Edmunds bill—then I insist, gentlemen, that these disqualifications do not apply to the Representative from Utah for the reason that those disqualifications that once did apply to him under Territorial conditions in Utah, were removed by these amnesties, and there is no evidence, there is no court record, there is no accusation even, except that made by religious fanatics

since the election of the member from Utah, that he ever violated the law against unlawful polygamous living, i. e., unlawful cohabitation.

I call your attention to the class of people who are, I will not say persecuting, because I have a sort of contempt for that word, and do not propose to plead persecution, but those who have hounded me to the threshold of the House of Representatives. Who are they? Are they the bankers, the merchants, the miners, the lawyers, the representative people of the State of Utah, or are they confined exclusively, with the single exception of a tenth-rate lawyer who is without standing in his own State, to missionaries sent from the Eastern States to convert the "heathen Mormons," and having been opposed by one native to the faith of the Mormon religion now pursue him to the doors of the House of Representatives? Is not the class entirely confined to them? Where are the petitions from the representative classes of the State of Utah?

Another thing that I wish to call the attention of the committee to is this: President Harrison, in his proclamation, says, "Those who shall fail to avail themselves of the clemency hereby offered will be vigorously prosecuted;" and yet there were no prosecutions instituted against the member from Utah after that.

I hold, further, that the disabilities that impaired the citizenship of the member from Utah was removed by the action of Congress and the President, the whole lawmaking power of the Government, by the passage of the enabling act. The enabling act, section 2, provided:

SEC. 2. That all male citizens of the United States over the age of 21 years who have resided in said Territory for one year next prior to such election are hereby authorized to vote for and choose delegates to form a convention in said Territory. Such delegates shall possess the qualifications of such electors.

* * * * * * *

The board of commissioners, known as the Utah Commission, is hereby authorized and required to cause a new and complete registration of voters of said Territory, to be made under the provisions of the laws of the United States and said Territory, except that the oath required for registration under said laws shall be so modified as to test the qualifications of the electors, as prescribed in this act; such new registration to be made as nearly conformable with the provisions of such laws as may be, and such elections for delegates shall be conducted, the returns made, the results ascertained, and the certificates of persons elected to such convention issued in the same manner as is prescribed by the laws of said Territory regulating elections therein of members of the legislature thereof.

And section 20 of the same act provided as follows:

SEC. 20. That all acts or parts of acts in conflict with the provisions of this act, whether passed by the legislature of said Territory or by Congress, are hereby repealed.

Those are the provisions of the enabling act, and that it was the intent of Congress to remove the disabilities that had been created by this Edmunds law is quite evident from the attempts that were made to do otherwise in the course of the legislation of the House with reference to this particular bill. At one stage of its discussion Mr. Wheeler, of Alabama, who was the chairman of the Committee on the Territories, proposed the following as a substitue for section 2:

All persons who are qualified by the laws of the said Territory to vote for representatives to the legislative assembly thereof are hereby authorized to vote for and choose delegates to form a convention in said Territory, and the qualifications for such delegates to such convention shall be such as by the laws of said Territory persons are required to possess to be eligible to the legislative assembly thereof.

Now, of course, had that amendment prevailed, the result would have been that all people that were disqualified by the Edmunds law would not be authorized to take part in the election of members to the constitutional convention, nor would they have been able to be members of that convention; but the amendment of Mr. Wheeler was not adopted; and the section which I have read, which required such modification in testing the electors that were authorized to constitute this convention and adopt the constitution—such modifications as I have read were made; and the Utah Commission accordingly changed the oath that was presented to those who desired to take part in the election of members to the constitutional convention so as to test them merely as to whether they were male citizens of the United States, 21 years of age, one year a resident of the proposed State, four months in the county, and sixty days in the precinct. I think I have the modified oath here.

Mr. LITTLEFIELD. That is, changed it from the oath required by the Edmunds-Tucker Act?

Mr. ROBERTS. Entirely changed the oath.

The CHAIRMAN. Was that the oath you took—the oath made by virture of that provision that is in the record in this case?

Mr. ROBERTS. No, sir.

The CHAIRMAN. Under a late one, was it; under the provisions of what act did you take the oath?

Mr. ROBERTS. I took the oath under the effect of amnesty; I took the oath that tested the qualifications for electing all the officers.

Mr. MCPHERSON. Did your oath follow the language of the Edmunds-Tucker statute?

Mr. ROBERTS. Yes, sir.

Mr. LITTLEFIELD. It was taken under that and not under this modification you are speaking of?

Mr. ROBERTS. Yes, sir; but I am speaking of the change that was made in the oath that tested the qualifications of those who wished to vote for the members to the constitutional convention. This was the oath generally required of voters for Territorial officers.

TERRITORY OF UTAH, *County of* ———, *ss:*

I, ——— ———, being duly sworn (or affirm), depose and say that I am over 21 years of age; that I have resided in the Territory of Utah for six months last past, and in this precinct for one month immediately preceding the date hereof; and that I am a native-born (or naturalized, as the case may be) citizen of the United States, and that my full name is ——— ———; that I am —— years of age; that my place of business is ———; that I am a (single or) married man; that the name of my lawful wife is ——— ———, and that I will support the Constitution of the United States, and will faithfully obey the laws thereof, and especially will obey the act of Congress approved March 22, 1882, entitled "An act to amend section 5352 of the Revised Statutes of the United States in reference to bigamy, and for other purposes," and that I will also obey the act of Congress of March 3, 1887, entitled "An act to amend an act entitled 'An act to amend section 5352 of the Revised Statutes of the United States in reference to bigamy, and for other purposes,' approved March 22, 1882," in respect to the crimes in said act defined and forbidden, and that I will not, directly or indirectly, aid or abet, counsel or advise any other person to commit any of said crimes.

——— ———.

Subscribed and sworn to before me this —— day of ———, 18—.

———— ————,

Deputy Registration Officer for ——— Precinct.

Mr. MORRIS. That is the oath you took?

Mr. ROBERTS. Yes, sir; in 1894.

Now, Mr. Chairman, under the direction of the enabling act the Utah Commission so modified that oath with reference to these particular offenses as to omit reference to them. This was the form of oath that was known as the "Constitutional oath,"——

Mr. LITTLEFIELD. Have you a copy of the oath they prescribed?

Mr. ROBERTS. This is a copy of the oath prescribed for voting for members to the constitutional convention.

Mr. LITTLEFIELD. Of the oath that the commissioners prescribed?

Mr. ROBERTS. Yes; this is the oath that I am about to read:

TERRITORY OF UTAH,
County of ——— *and* ——— *Precinct:*

——— ——— on oath swears (or affirms) that at the next election he will be 21 years of age and upward and will have been a citizen of the United States for ninety days and have resided in the Territory for one year and in the county four months and in the precinct for sixty days.

And then it is signed, and the certification of the registration officer follows. I call attention to the change in these two forms of oath to show that the intent of the enabling act——

Mr. MORRIS. That was all of the oaths?

Mr. ROBERTS. Yes, sir; all of the constitutional oath.

Mr. MCPHERSON. I do not quite understand that. That oath was prescribed by the Utah Commissioners, under and by virtue of the authority of the enabling act?

Mr. ROBERTS. Yes, sir; that is right.

Mr. MORRIS. Will you be kind enough to read that part of the enabling act that you read just now to show what the enabling act was?

Mr. LITTLEFIELD. Authorizing the oath?

Mr. MORRIS. Yes.

Mr. ROBERTS (reading):

The board of commissioners, known as the Utah Commission, is hereby authorized and required to cause a new and complete registration of voters of said Territory to be made under the provisions of the laws of the United States and said Territory, *except that the oath required for registration under said laws shall be so modified as to test the qualifications of the electors as prescribed in this act.*

That is, as to their being citizens of the United States and 21 years of age.

Mr. MORRIS. What were the qualifications?

Mr. ROBERTS. "That all male citizens of the United States over the age of 21 years who have resided in said Territory for one year next prior to such election are hereby authorized to vote for and choose delegates to form a convention in said Territory."

Mr. MORRIS. Are those the sole qualifications.

Mr. ROBERTS. Yes, sir; those are the sole qualifications required under this enabling act. I call attention to the distinction between the qualifications prescribed under that act and those qualifications making a person eligible to vote for members of the State legislature.

Mr. LITTLEFIELD. Did that go so far as to also make them eligible to office in the convention?

Mr. ROBERTS. Yes, sir; they could also be members of the convention under that.

Mr. MCPHERSON. Any man who was an elector could be a delegate?

Mr. ROBERTS. Yes, sir.

In the interview that was published in the Washington Post of November 29, 1899, Senator Rawlins, who introduced this enabling act and engineered it through the House, in a prepared statement made in the Post, not a casual interview with a reporter, but in a prepared statement that he himself submitted, made these remarks:

> That polygamists should be disqualified to vote or to hold office was no part of the compact between the State of Utah and the United States. In Territorial elections polygamists were so disqualified; but Congress purposely and knowingly wiped away all such disqualification as to the very first election to be held under the enabling act, namely, the election of delegates to the constitutional convention.

Then again, in addition to that, came the act of the State of Utah, which prescribed the qualifications of her own electorate, under the limitations, of course, fixed by the Constitution—those limitations that secure an equality of the right of citizens in all the States and that prohibit their rights being abridged by reason of previous servitude, etc. (Constitution, fifteenth amendment). But the sovereign State of Utah, acting in her sovereign capacity in determining who should constitute the electorate of the new State, followed substantially the course that had been outlined in the enabling act; that is, that citizens of the United States of a given age and residence should be electors, and that only persons guilty of treason and of crimes against the franchise should be disqualified either to vote or to hold office.

Mr. MORRIS. Was there anything in the constitution adopted, and which was approved by Congress, on that subject?

Mr. ROBERTS. Yes, sir; the constitution was adopted by the State and approved by Congress.

Mr. MORRIS. I say was there anything in that constitution on that subject?

Mr. ROBERTS. Of declaring the qualifications of its electorate?

Mr. MORRIS. Yes.

Mr. ROBERTS. Yes, sir.

Mr. MORRIS. Will you be kind enough to read it?

Mr. LITTLEFIELD. You stated that in your opening remarks before the committee. We have it in the record somewhere.

Mr. MORRIS. This was drawing my attention more peculiarly and particularly to it.

Mr. ROBERTS. I do not seem to have the constitution at hand to refer to.

Mr. MORRIS. Well, we will look that up.

Mr. ROBERTS. But I think I can get it for you in a moment.

Mr. MORRIS. I can look that up afterwards.

Mr. ROBERTS. I next come to the settlement of this polygamous question between the State of Utah and the United States and the consideration of the terms of the compact to which reference has been made. It was rehearsed here yesterday——

(After examination of a book then handed to him.) Responding to Judge Morris's request, I now read from article 4 of the Utah constitution:

> The rights of citizens of the State of Utah to vote and hold office shall not be denied or abridged on account of sex. Both male and female citizens of this State shall enjoy equally all civil, political, and religious rights and privileges. Every citizen of the United States of twenty-one years of age and upward who shall have been a citizen for ninety days, shall have resided in the State or Territory for one year and in the county for four months and in the precinct for sixty days next preceding any election, shall be entitled to vote at such election, except as herein otherwise provided.

And then follows:

No person shall be deemed to be a qualified elector of this State unless such person be a citizen of the United States. No idiot, insane person, or person convicted of treason or crime against the elective franchise, unless restored to civil rights, shall be permitted to vote at any election or be eligible to hold office in this State.

Those are qualifications of the electorate of the State of Utah.

Mr. MORRIS. Nothing about polygamy or unlawful cohabitation in the constitution?

Mr. ROBERTS. None whatever, sir; that is, not with reference to the subject of voting or holding office.

Mr. MCPHERSON. In reference to the elective franchise?

Mr. ROBERTS. In reference to the elective franchise. There is, of course, something on the subject of polygamy, but it has no bearing upon the qualifications of the electorate.

I was remarking, when interrupted to make this explanation for Judge Morris, that a historical statement was made here yesterday with reference to the subject of polygamy, and just for a moment I desire to call the attention of the committee to that matter, as it leads up to and is pertinent to the consideration of its settlement in the State of Utah. It is generally believed that the practice of polygamy by the Mormon Church, within a very limited circle, began at Nauvoo, in the State of Illinois, about 1840. In 1846 the Mormons were expelled from the State of Illinois, or at least were compelled to remove from that State by mob violence; and they put 1,000 miles of wilderness between them and the then frontiers of the United States. On arriving in Utah, which was then Mexican territory, they did not seek to establish an independent government by any manner of means, but in 1849 they organized what was called the provisional State government for the State of Deseret and sent delegates to Washington to ask admission into the Union.

I call attention to this fact because it is very frequently stated that the object of the Mormon people in leaving the confines of the United States was to set up a separate government, and that they had no attachment for the institutions of the United States; but have ever been inimical to them; and have sought to avoid contact with them and the civilization they represent. In 1852 public announcement was made of the doctrine of plurality of wives as a part of the revealed law of God to that people. For ten years the rightfulness of the practice went unchallenged so far as any legislation against it was concerned by Congress, but in 1862 the first law of Congress was enacted against the Mormon marriage system. Of course it is well known, I presume, that the Mormon people took the position that that law was a direct infringement of their religious liberty. They regarded themselves as entirely protected in the practice of that, to them, religious doctrine, by virtue of the first amendment to the Constitution, which provides that "Congress shall make no law concerning an establishment of religion, or prohibit the free exercise thereof;" and, consequently, since they regarded that law as an infringement of their religious liberty, they went on in the practice of it notwithstanding the law. For a good many years there was no attempt worthy the name to enforce that law in the Territory of Utah. Not until about the year 1876 was there a case brought up which afforded the opportunity of bringing it before the courts to test the constitutionality of the law.

Mr. MORRIS. What case was that?

Mr. ROBERTS. That was the Reynolds case, and it was the Mormon people who voluntarily supplied that case. Mr. Reynolds was chosen by the Mormon leaders to stand, as they had hoped, for the vindication of that principle of religious freedom. They were, perhaps, overconfident in the rightfulness of their contention that the Constitution shielded them in the practice of plural marriage as part of their religion; and in order to get a decision of the courts with reference to that law Mr. Reynolds was called upon to submit his case to the courts. He was selected in preference to another gentleman, who had offered himself, because Mr. Reynolds's case seemed to touch all the points directly at issue; and the testimony was voluntarily supplied, as was also the whole case, and it went to trial. My recollection is that it reached the Supreme Court of the United States and a decision was rendered in the year 1878.

Mr. MORRIS. It is in 98 United States, if you have that here.

The CHAIRMAN. What was the conclusion of the lower court—for or against the act?

Mr. RAWLINS. All the way through for the act.

Mr. ROBERTS. But the prosecution did not begin before about 1876, as I now recollect it.

The CHAIRMAN. I understand.

Mr. ROBERTS. During all this time the Mormon people were not hiding their religious faith with reference to this subject under a bushel, by any means. They were entirely conscientious in their convictions upon that subject, and from the pulpit, through the press, and upon the platform—everywhere they made bold declaration of their belief in the righteousness of that doctrine. I know in 1856 and 1857 John Taylor, one of the leading Mormon apostles, was sent to New York to publish a paper that would defend that marriage doctrine. He published it under the title of The Mormon. He selected his office between the offices of two of the principal dailies of New York City, and, without any hesitation whatever, announced his belief in Mormon plural marriage and his readiness to meet all comers upon that question.

Of course you doubtless remember, too, that in those years the then chaplain of the United States Senate (Dr. Newman) visited Utah for the express purpose of entering into a public discussion of that question, and was met by Prof. Orson Pratt. They argued the question for three days in the Mormon Tabernacle. Through all these years relations were being formed without any reference to their concealment. The marriages of the second wife and the third wife were celebrated by public receptions, as marriages ordinarily are; the anniversaries of the occasions were also honored, and it was regarded as a proper institution, sanctioned by parents, sanctioned by first wives, as well as by those women who entered into the plural relations.

I speak of these things to show you that if there has been a polygamous problem for so long a time in the United States the Mormon people are not alone responsible for its continuance for so long a time. The absence of attempts to suppress this institution gave warrant to the contention of the Mormon leaders that the act of 1892 was in violation of their constitutional right to practice this part of their religion.

In 1882 the law of 1862 was supplemented by what was called the

Edmunds law, and it was at that time that the offense of unlawful cohabitation was created, defined, and the punishment prescribed.

Mr. McPherson. If it will not interrupt you, I would like to ask a question or two there.

Mr. Roberts. Certainly.

Mr. McPherson. Did your church teach that it was allowable or that it was the duty of a man to take plural wives?

Mr. Roberts. It taught that it was the duty of a man. This hair-splitting proposition, that it was permissible only, but not mandatory, I scarcely think was the view taken by prominent Mormon leaders.

Mr. McPherson. Very well. Was it the teaching of your church, and have you yourself taught by your writings in the form of a book, that if a man took plural wives that in the world to come that man had the advantage over a person who had but one wife, and if he had the advantage, what was the advantage?

Mr. Roberts. I don't think I ever advanced that idea.

Mr. McPherson. I have been told that in your book, "A New Witness for God"——

Mr. Roberts. I have no recollection of anything like that in it; it does not refer to plural marriage, as I now remember.

Mr. Littlefield. Is that the proposition of the church, or how do you understand it?

Mr. Roberts. I must say that so far as that matter is concerned it is new to me; I have not heard that view put forth.

But to return to what I was saying before the interruption. With the passage of the Edmunds law in 1882 a very vigorous prosecution was instituted against the offense of polygamous living—unlawful cohabitation. The sectarian ministers who had come among us and whose arguments had not convinced us—and I don't know that they ever used any persuasion, if they did I never witnessed it, although I heard a great deal of abuse, misrepresentation, and vituperation. I heard the men that were honored among us derided and discredited—I heard plenty of that—but I don't remember that they ever tried to persuade us that we were wrong; and their arguments were not sufficient, because as religious people they largely based their arguments upon the Scriptures, and the Scriptures——

Mr. Littlefield. From your standpoint argued the other way.

Mr. Roberts. (Continuing.) Were rather against them. Now, the vigorous prosecution that arose after 1882 was fomented very much like this present agitation is fomented throughout the United States. The country was told that our plural marriage system was not to be reasoned with, but to be stamped out of existence by force; and consequently Congress, under the whip and spur of popular clamor, enacted the law of 1882 and provided special funds for its vigorous enforcement. Shortly after the passage of this law there commenced what was generally known as the antipolygamy raid. Families were disrupted; men were driven into exile or compelled to submit to the most unjust treatment under prosecution.

Under the law defining unlawful cohabitation the offense was held by the prosecutors to be a continuous one, and that it was allowable to divide the time through which it continued into as many fragments as the prosecution should consider proper. It was held that the misdemeanor of unlawful cohabitation could be made a separate offense every day, every week, every month, or every fraction of a day for that matter, and that a separate count in an indictment could be made

for every such fragment of time, and there was no end to the punishment that might be inflicted under that arrangement. Men were indicted on a number of counts in that way, and some of those in sympathy with the prosecution boasted that they could make the imprisonment for this misdemeanor cover a man's entire life. The result of it was that we had a reign of terror in Utah. It was during that time that many fled into exile. The imprisonment of hundreds of men took place, and the Territory was terrorized.

In the midst of those trying times, and after they had continued through some eight or ten years, the good old man who stood at the head of the church—Wilford Woodruff—much exercised in seeing his people thus disturbed, unjustly prosecuted under these laws, followed most relentlessly by their enemies (and the heaviest punishment, not imprisonment, but the torture of mind and inconvenience and exile, fell not upon the men, but upon the women and children who were involved in the system), and greater evils threatening—under these circumstances Wilford Woodruff sought his God in prayer, his heart being torn, I say, by grief, and by the view his people presented under these conditions—he sought his God in prayer, very frequently a matter of derision on the part of many of the sectarian priests who came to Utah to reform "Mormon heathendom." But every true man, I take it, who has in any way himself felt responsible for the happiness of communities will appreciate the anguish with which the heart of President Woodruff was rent. He sought aid in prayer, with the result, as he claimed, that he had received an inspiration and permission from God to call a halt on this question. He met the demands of the country with reference to it, and in the month of September, 1890, issued what was called the Woodruff manifesto. Now, I don't know whether it will be objected to if I submit that document for this record.

The CHAIRMAN. It has already been read and referred to several times, and I do not see why you should not. It is a public record and has been here before the various committees of the House.

Mr. MCPHERSON. Right on that point. It is very difficult for a lawyer to tell when a court will and when a court will not take judicial notice of certain facts, and whether we are acting under the technical rules a court would act under I am not advised; but if it is not annoying to you—and you may do as you see fit about answering me—I would like to ask you this. According to general repute, you have recently written a book. Whether we would take judicial notice of that book I am not prepared to say—a book entitled, perhaps, "The New Witness for God."

Mr. ROBERTS. Yes.

Mr. MCPHERSON. Did you write that?

Mr. ROBERTS. Yes, sir.

Mr. MCPHERSON. And when?

Mr. ROBERTS. I forget now. It must be some three or four years ago.

Mr. MCPHERSON. Within the last three or four years?

Mr. ROBERTS. Yes, sir.

Mr. MCPHERSON. And have you an extra copy of that book in the city with you?

Mr. ROBERTS. I have no copy of that book, but I shall be pleased to see that a copy is furnished you. I will see that a copy is here in a day or two.

Mr. McPherson. I don't know whether we would have a right to consider it or not.

Mr. Littlefield. He says he is willing we should.

Mr. Roberts. Oh, yes; it was published to be read as widely as possible.

Mr. Morris. Are you willing that we shall take that book and consider it?

Mr. Roberts. Yes, sir; perfectly, together with the article published in the Era; but in the event of that Era article being submitted I would like to have all of it submitted.

The Chairman. Which article do you mean?

Mr. Roberts. I mean the article referred to several times in testimony and in argument—an article I wrote on the subject of polygamy.

Mr. Littlefield. A reply you made?

Mr. Roberts. Yes, sir.

The Chairman. A brief article from the Improvement Era of May, 1898, by John M. Reiner, on Mormonism, a brief prelude, and then a lengthy letter of Mr. John M. Reiner on Mormonism, and then comment on that by Elder B. H. Roberts. That is now printed with our testimony, marked "Exhibit C."

Mr. Roberts. Now, Mr. Chairman, in continuation of the historical sketch I am making of this controversy I call attention to the New York Independent, a weekly religious paper published in New York, under date of March 3, 1898. The following question was submitted to President Woodruff: "It is alleged that advice which you publicly gave to the members of the church to refrain from such plural marriages is not observed." Replying to that charge Mr. Woodruff, in that publication, said:

> In the so-called manifesto to which you refer I said: That, inasmuch as laws have been enacted by Congress forbidding plural marriages, which laws have been pronounced as constitutional by the court of last resort, I hereby declare my intention to submit to those laws and to use my influence with the members of the church over which I preside to have them do likewise.

Continuing, President Woodruff said:

> This promise has been faithfully kept, and no one has entered into plural marriage by my permission since the manifesto was issued. There never were laws of such a character affecting relations which had existed over half a century so closely observed as those relating to plural marriages have been. But I can not say that everyone who was living in plural marriage before the issuance of the manifesto has since then strictly refrained from such associations.

The Chairman. What was the occasion of his saying that?

Mr. Roberts. The occasion was that the New York Independent was publishing a symposium of letters from Utah sectarian ministers upon the subject of the revival of polygamy in Utah, as it was called, and among inquiries that were submitted was this one to Mr. Wilford Woodruff, to which he made this answer I have just read. The official announcement of the Mormon Church that it would discontinue plural marriages and observe the laws enacted by the United States with reference to that subject laid the foundation for the people of Utah to abandon their local controversies and come together and secure Statehood for Utah.

In the summer of 1894, in July, as I remember it, the enabling act was passed by Congress and the people of Utah were authorized to form a constitution. In that enabling act it was said, with reference to polygamy: "Said convention shall provide by ordinance irrevocably

without the consent of the United States and the people of said State, first, that perfect toleration of religious sentiment shall be secured and that no inhabitant of said State shall ever be molested in person or property on account of his or her mode of religious worship: *Provided, That polygamous or plural marriages are forever prohibited.*"

That is the language of the enabling act; and that was the demand, and the only demand, that was made by the Congress of the United States upon the people of Utah with reference to that matter.

Mr. MORRIS. At the time of that act, Mr. Roberts, was it understood that these polygamous relations had been discontinued?

Mr. ROBERTS. Substantially so; yes, sir. I think that was the understanding.

Mr. MORRIS. The understanding was that these polygamous relations had been discontinued and not only the holding of these women as wives, but also living in unlawful relations with them?

Mr. ROBERTS. That that was the general status of the case; that was the understanding.

Mr. MORRIS. Was it not understood that the people universally throughout that Territory had accepted that as their belief?

Mr. ROBERTS. No, sir; I do not know that there was any understanding upon that particular point upon the part of the people, but as a matter of fact——

Mr. MORRIS. Reference was made here yesterday, you will remember, to a statement made by the head of the church, Mr. Woodruff, that he understood the proclamation to apply not only to the taking of wives, but also to the living with those women who had already been taken as wives.

Mr. ROBERTS. Yes, sir; that explanation was published and generally understood to be the explanation of the president, I think, upon the main facts.

Mr. MORRIS. Was it understood that at the time this act was passed the people of Utah were living universally in compliance with that act?

Mr. ROBERTS. I do not understand that that was universally the case, but I think it was quite generally the case.

I take it, sir, that the Congress of the United States is composed of reasonable men, who have some knowledge, of course, of human nature, and that the existence of an institution that had covered more than half a century in the lifetime of a State—that you could not hope, since the relationship, as to its rightfulness, was embedded in the convictions of the people—you could not hope that there would be an absolute and universal abandonment of those relations; but it was generally understood that the manifesto reached these relations, and I have some remarks to submit on that presently, when we get further along.

Mr. LANDIS. Did not the then Delegate from Utah in the address he delivered state that polygamy had not only been abandoned as a practice but eradicated as a belief.

Mr. ROBERTS. I think not, sir. I do not think the Congress of the United States undertook to reach beliefs and I do not think the gentleman (Mr. Rawlins) had any such understanding as that.

Mr. LANDIS. My recollection is that Mr. Rawlins, in the address that he delivered at that time before the House of Representatives, stated that polygamy had not only been practically abandoned as a practice, but eradicated as a belief.

Senator RAWLINS. I will state what I did say on that. I stated that when persons were called up for naturalization before the courts, and when the questions upon that subject were asked them, that it developed that many people who had been connected with the church no longer believed the practice of polygamy to be right; and that statement was based upon facts within my own observation. People would come before the courts for naturalization, and they would be asked whether they believed in polygamy, and they would state that they did not. These people came before the courts, after the President's proclamation, and stated that they no longer believed in polygamy, and that was the reference to which I made. I have heard statements by many Mormons in the course of an examination in court in relation to individual instances.

Mr. LANDIS. I do not remember that you stated you formed your conclusion in that way.

Mr. RAWLINS. I think I stated that people had come before the courts and had made those statements; I think that was stated.

Mr. ROBERTS. Mr. Chairman, I take it from the nature of the question of the judge here on my right—Judge Morris——

Mr. MORRIS. My question was simply prompted by what was said yesterday——

Mr. ROBERTS. I think I understood the nature of your question, sir, and I wanted to answer that.

Mr. MORRIS. It was not prompted by any desire to interfere with your argument in any way; I simply referred to what was said yesterday, and to what you had to say about it.

Mr. ROBERTS. Yes; but I take it that the point in the question would be that the absence of a clause in the enabling act requiring the disruption of the family relations that come from the plural marriages of the past grew out of the general belief that those relations had been abandoned; that, therefore, it was not thought necessary to include such a provision in the enabling act. But it was also universally believed, and certainly universally the practice, that plural marriages had been discontinued in the church; and the fact that they had been discontinued would argue that this clause that is now there prohibiting plural or polygamous marriages should not be there. But it is there, and the other is absent; and I believe it is absent for the reason that there was no requisition that morality, or that religion, or that any other consideration of righteousness would make, that would justify anybody in pressing too hard upon the people who were involved in those relations.

A statement was made here this morning with reference to the subject of compact, to determine what that compact is. The logical course to pursue is to go to the compact, and these are the terms of it, so far as the demands of the United States are concerned, namely: "Said convention" [meaning the Utah State constitutional convention] "shall provide by ordinance, irrevocable without the consent of the United States and the people of said State, first, that perfect toleration of religious sentiment shall be secured, and that no inhabitant shall ever be molested in person or property on account of his or her mode of religious worship: *Provided*, That polygamous or plural marriages are forever prohibited." I take it, sir, that the great concern of Congress upon this subject was that the fountain of the supposed evil

should be dried up. That was the principal thing, and the streams that flowed from it would of course dry up of themselves in a very short length of time. The then existing polygamous relations concerned people who were already at least in middle life, or aged, and there was no disposition, so far as appears, on the part of the legislators in Congress to work so great a hardship upon the people who had already sacrificed so much in the interest of submitting to the demands of the country upon so grave a question.

Now these were the terms of the compact on one side. What were the terms on the other side? How were the demands of the people of the United States met by the people of Utah? Why, so far as it was possible, the language in ordinance of the constitution followed the language of the enabling act. It said: The following *ordinance shall be irrepealable without the consent of the United States* and of the people of this State. First, that there shall be perfect toleration of religious sentiment, and no person shall be molested on account of his religion—I am quoting the substance only—"*provided*," and now I quote the exact language, "that *polygamous or plural marriages are forever prohibited.*" That is the ordinance in the Utah constitution, and that was adopted early in the labors of the convention.

Mr. McPherson. Right there let me ask a question. Do I understand your position to be that it was the policy of this Government to then and there stop polygamous marriages, but that polygamous cohabitation should continue until the parties should die off?

Mr. Roberts. The silence on the existing relations so far as any demand is concerned, I think, sir, indicates that.

Mr. Littlefield. That is, that practically put in the constitution the first clause of the Edmunds act against polygamy, but did not put in the other

Mr. Roberts. I am coming to that. I have not yet finished the full statement of this subject.

Mr. Landis. Then you interpret polygamy or plural marriages as being future polygamous or plural marriage ceremonials?

Mr. Roberts. Yes, sir.

Mr. Landis. Then your interpretation is that a marriage is a ceremony?

Mr. Roberts. Yes, sir; of course followed by the relations of marriage.

Mr. Landis. You do not think that the discussion that preceded the passage of that enabling act would justify the technical definition of marriage being a state or condition, which is the definition given by the dictionary?

Mr. Roberts. I do not know that I understand the point of your question.

Mr. Landis. The dictionary states that marriage is a state, that it is a condition.

Mr. Roberts. Yes.

Mr. Landis. Now, this provision in the enabling act is to the effect that polygamous or plural marriages are hereafter prohibited.

Mr. Roberts. Yes, sir.

Mr. Landis. In other words, does not the discussion that preceded the passage of that act justify this construction of that provision, provided that plural or polygamous marriage or conditions are hereafter prohibited?

Mr. ROBERTS. I think not, sir. The language is very specific, and had——

Mr. LANDIS. I agree with you; it is specific.

Mr. ROBERTS. And had the point you now make been in the minds of the legislators the term that would have reached it would be "polygamy"—"provided that polygamy is forever prohibited;" but the language was very express, "plural or polygamous marriages," and if the polygamous or plural marriages were prohibited, of course the status could not possibly follow.

Mr. LANDIS. And the dictionary says that marriage is a status, that marriage is a condition; therefore why doesn't it explicitly say, "provided that polygamous or plural conditions are hereafter prohibited?"

Mr. ROBERTS. Well, of course, that is a matter of interpretation.

Mr. LANDIS. A necessary construction. I think, following the discussion that preceded the passage of the act, that it will be seen that that construction is justified.

The CHAIRMAN. Did not both the Edmunds Act and the Edmunds-Tucker Act define polygamy as the making of the marriage contract, and not the state?

Mr. ROBERTS. It defined it as marrying the second wife or the third, the legal wife being still alive. That is roughly its provision.

The CHAIRMAN. So the word "polygamy," so far as it is construed by the statute, means the taking of the unlawful wife?

Mr. LITTLEFIELD. That is, it received the narrowed and restricted construction.

The CHAIRMAN. Exactly. Of course, I understand that polygamy has had another construction by the Supreme Court, but the word polygamy itself is defined in the United States laws, as well as in your Utah laws, as covering only the act of marrying when there is another wife living.

Mr. ROBERTS. Yes; and I present the contention that the language was carefully selected and used by the House to prohibit "polygamous or plural marriages" for the future, and that of course would make the status of polygamy in Utah, so far as it would follow from future marriages, nonexistent.

Mr. MORRIS. And your contention is, then, that the words of the enabling act did not cover the future living in the polygamous marriage state?

Mr. ROBERTS. Not with wives that had previously been——

Mr. MORRIS. Married?

Mr. ROBERTS. No; it did not; not from marriages that had been previously contracted.

Mr. MORRIS. In other words, that you would not be following either the letter or the spirit of the enabling act by sustaining those polygamous relations with wives who had already been taken prior thereto?

Mr. ROBERTS. That is not my contention. But in developing my idea to show that my interpretation of the enabling act was the one understood by the convention, and accepted by it, and acted upon, and afterwards accepted by the President of the United States when he admitted Utah by proclamation, I now propose to go into the history of the adoption of the clause of the constitution that directly met the demand of the country.

(At this point the committee adjourned until to-morrow morning at 10 o'clock a. m.)

SATURDAY, *January 6, 1900.*

The committee met at 10.30 o'clock a. m., Hon. Robert W. Tayler in the chair.

Mr. ROBERTS. Mr. Chairman, at the close of my remarks yesterday I was considering the question of compact between the State of Utah and the United States, and had finished my discussion of the demands made by the United States upon the State of Utah with reference to the subject of polygamy, and had shown that the constitutional convention for the State of Utah had, by an ordinance irrevocable, without the consent of the United States, adopted the language of the enabling act.

I shall now, however, proceed to show that the constitutional convention did more than that; and in doing so I quote the proceedings of the convention from the official report of the proceedings of that convention. The discussion covers that official report from page 1736 to page 1750. After the adoption of the language of the enabling act in the ordinance a fear was expressed on the part of some members of the convention that that would not be regarded as meeting the requirements of the country with regard to polygamy; and Mr. Varian, who, by the way, was the last United States district attorney for the Territory of Utah, and a lawyer of ability, introduced a resolution which read as follows, or rather he said:

I offer an amendment to section 2, to insert at the end of section 2 the following——

By the way, section 2 of the constitution was the section that made all the laws of the Territory operative in the State until they should expire by their own limitations. It was the general provision that transferred all the Territorial laws into the State.

Mr. LITTLEFIELD. Continued them in operation?

Mr. ROBERTS. Continued them in operation until limited by their expiration. Mr. Varian offered this amendment, then, to that general clause. He moved that this be added at the end:

The act of the governor and legislative assembly of the Territory of Utah entitled "An act to punish polygamy and other kindred offenses," approved February 4, 1892, in so far as the same defines and imposes penalties for polygamy, is hereby declared to be in force in the State of Utah.

I think I ought to explain that the Territory of Utah in 1892, by this act here referred to, paralleled the enactment of Congress upon that subject; that is, it defined polygamy, and it also defined unlawful cohabitation, and provided penalties for each, the penalties in both cases being the same as those prescribed by the United States law, with the exception that it did not continue the political disqualifying provisions of the Edmunds law. The part of the law defining polygamy, of course, went to the act of marriage only—the unlawful marriage, while the clause in reference to unlawful cohabitation had reference to polygamous living after the unlawful marriage had been contracted. So that this resolution, you will see, took that part which related to polygamy only, or rather to polygamous or plural marriages only, and proposed to make it operative in the State of Utah.

I shall read part of Mr. Varian's remarks when introducing that resolution, as they appear in the report of the debates:

I desire to give a reason for this amendment, which I am impressed is a strong one. The enabling act requires the convention to provide, by *irrevocable ordinance, that polygamous or plural marriages are for ever prohibited.* In the ordinance adopted by this convention that declaration is made: "The following ordinance will be *irrev-*

ocable without the consent of the United States and the people of this State." First, among other things, *polygamous or plural marriages are for ever prohibited.* Now, while this is strictly in accord with the act of Congress, it is not in accord fully with the spirit of that act; because it must be confessed, I think, that it was the intention of the people of the United States assembled in Congress that a prohibition in fact as well as by words should be evidenced by the organic law of this State. Of course, the declaration that we have already adopted in the ordinance is not self-executing. It amounts to nothing except, like one of the Ten Commandments, it might have the effect of a moral law upon the minds and consciences of those who look upon the Constitution as a guiding instrument for their lives. Nor have we accomplished the purpose, as I view it, by our declaration in the schedule——

Referring, of course, to the general laws that were made operative in the State by the general provision of the schedule—

sought to be amended, that all laws of the Territory of Utah now in force shall be continued in force. The moment this State enters into the Union all Congressional acts of this kind fail, so far as their operation is concerned within this State. There was passed in 1892, by the legislature of the Territory, an act substantially—indeed, I may say literally—in accord with it or following the act of Congress upon this subject. That act defines and provides penalties for the specific offenses, polygamy, unlawful cohabitation, adultery, incest, and fornication. Now, that law, I apprehend, is not in force in Utah to-day, and the reason is that Congress entered upon that field of legislation and covered the whole subject-matter. There was nothing left for the Territorial legislature to act upon. That being so, it is not included in this provision of section 2, and if it is desired that there shall be a compliance with the intent of the act of Congress, and with the understanding everywhere, in spirit as well as in letter, it will be necessary for this convention to make some positive declaration adding the force of law which would be self-executing; that is, that the courts would undertake to execute it without further legislation upon the subject. This act of the Territorial legislature enters a field that was already occupied, and as long as the Congress had occupied that field of course nothing was left for the Territorial legislature to act upon, and I desire that there shall be nothing thrown in the way of the approval of this constitution by those in authority at Washington. I make this suggestion to this convention for their consideration: Whether or not it will not be wise, having in mind the general conditions and circumstances attendant upon the passage of this enabling act, and the difficulties that theretofore had existed in bringing to a conclusion a long and laborious struggle, to in terms adopt and enact this first section relating to this particular offense already enacted by the Territorial legislature.

You will observe, gentlemen, that Mr. Varian held that the law of the legislature of 1892 was invalid, and hence would not be made operative by the general provision that transferred the Territorial laws into the State.

In the course of his argument Mr. Varian called attention to this, I remember, also. He put the question when there were others who opposed his view. He put this question: Suppose this Territorial law had prescribed different punishment for those crimes than had been fixed by the national legislation, "which," he asked, "would prevail?" Offering the resolution named was an effort on his part to avoid what he conceived to be a difficulty by taking this first part of the law that concerned polygamy only and make it operative by adopting it in the constitution itself. As soon as he undertook to do that there were some signs of dissent in the convention, that made itself manifest by some questions that were put to him with reference to the scope and effect of his proposed amendment.

Mr. Thurman arose at the conclusion of Mr. Varian's speech, and said:

I desire to ask, Mr. Varian, if the amendment you propose would not enact a great deal more than Congress requiries of us in the enabling act?

Mr. VARIAN. In what way?

Mr. THURMAN. Well, if I remember that act, it goes into detail.

Mr. VARIAN. Well, but the amendment confines it to that particular matter. It does not touch the other offenses mentioned in this act at all. It does not touch cohabitation, nor adultery, nor incest, nor fornication.

You see, he clearly understood his resolution to be limited to that part of the Territorial act that went to the subject of plural or polygamous marriages only. Later on in the discussion, the question was again propounded to him. A Mr. Evans spoke. He was a member of the convention, a lawyer—and, by the way, both Mr. Varian and Mr. Evans were Gentile lawyers. Mr. Evans had been a member of the Territorial legislature in 1892, and had engineered through the legislature this particular act of 1892; and he held, in opposition to the views of Mr. Varian, that this law would be operative in the State, under the general provisions of the schedule bringing the laws of the Territory into the State. In the course of the contention Mr. Evans said:

I would like to ask you (Mr. Varian) a question. The gentleman will agree with me that your amendment will repeal the other kindred offenses in that statute?

Mr. VARIAN. No; there is nothing to repeal. If you want the other kindred offenses, my answer is, prohibit them by law under penalties. Your legislature that meets in March next must enact a law. *I do not enter upon that subject, because I am not meeting that issue. I am simply meeting the issue which is tendered here,* as I think, to carry out in spirit the act of Congress and the will of the people of the United States, so that no stumbling blocks may be thrown in the way of this onward march toward statehood; and I agree with my friend from Davis (Mr. Roberts). I do not put it upon the grounds that were stated here this morning. *I do not like a sneak.*

I shall have occasion later on to refer to that remark, but I continue now to read from this record:

I would not desire anything to be done that was not done in good faith, but I believe that this people intends this in good faith, and therefore I believe that they will ratify this action here to-day.

Mr. EVANS. I would like to ask a question. Suppose the act of 1892 were valid?

Mr. VARIAN. If the law were valid I should not then introduce——

Mr. EVANS. Wouldn't it then repeal everything except the polygamy?

Mr. VARIAN. If the law were valid it might repeal by implication, although repeals by implication are not favored.

The roll was called on the adoption of Mr. Varian's amendment, and the amendment was adopted.

I call attention to this discussion and the introduction of this resolution, that finally carried, to show you that the constitutional convention for the State of Utah plainly understood that the language of the enabling act, saying that there should be perfect toleration of religious sentiment, provided that "polygamy or plural marriages are forever prohibited," was understood by that whole convention to go to the subject of future marriages only, and did not intend to disrupt existing relations. And this gentleman, Mr. Varian, introduced this resolution to in an effectual way stop plural marriages for the future, and the part of the law that would tend to disrupt the relations of the past was knowingly, purposely, and publicly omitted from the provision that was meant to meet the demands of the United States on the part of the people of Utah.

That constitutional convention room was crowded. The discussions were public, and a stenographer of great skill had been employed, that the debates might be published and help in the interpretation of the constitution in the future. And I make this point especially emphatic, because I think it meets the point that was submitted to me late yesterday afternoon by a member of the committee (Mr. Landis), and it clearly shows that that was the view the convention took.

Mr. LANDIS. Who represented the United States before that convention?

Mr. ROBERTS. Nobody represented the United States. We regarded

the United States represented, so far as its demands were concerned, in the enabling act that was before us, and we were operating under that.

Mr. LANDIS. Was this discussion ever brought to the attention of Congress? Was this stenographic report of the discussion ever brought to Congress before the proclamation of the President?

Mr. ROBERTS. I can not say as to that. It was quite fully published in the papers at the time, and it was afterwards published in the official report from which I have been quoting. I can not say that anyone particularly brought it to the attention of the President or Congress, but if those who had been watching over this question and desired to see that the people of Utah met the demands of the country ever made any objection to this settlement of the question, as foreshadowed here in this discussion, then I do not know it. Certainly they had ample opportunity to do it if the settlement of the question was not satisfactory.

Mr. FREER. Your idea was that all that Congress demanded was simply the prohibition of plural marriages?

Mr. ROBERTS. Yes, sir.

Mr. MCPHERSON. Did those proceedings become a public document for distribution?

Mr. ROBERTS. Yes, sir.

Mr. LANDIS. Your understanding was that all Congress demanded was the prohibition of the ceremony of plural marriage?

Mr. ROBERTS. Yes, sir; and I wish to call attention to the fact that this act on the part of the constitutional convention was straightforward and honest.

Mr. LITTLEFIELD. What construction have the courts of Utah, since the adoption of the constitution and the admission of the State, placed upon those provisions of the statute? Have they entertained prosecutions for unlawful cohabitation?

Mr. ROBERTS. The question has not come up on unlawful cohabitation; but the clause in the Territorial act which defined unlawful cohabitation also defined and provided punishment for adultery and incest. There was a case that came up from the northern part of the Territory in 1897, and the courts ruled upon that question in 1898—I think on the 4th day of April, 1898. I think the case was the State *v.* Norman. I was coming to that later, but since you have asked the question, I will say that that case came up, and the courts held that the law of 1892 was a valid law in the State.

Mr. LITTLEFIELD. Continued in force by virtue of the provisions of the constitution.

Mr. ROBERTS. Yes, sir.

Mr. LITTLEFIELD. Contrary to the view taken by Mr. Varian?

Mr. ROBERTS. Yes, sir. Although the court was divided on that subject, I hold that the only insincerity manifested in that settlement of the polygamy question—and the members of the constitutional convention were really invited to subterfuge and deception—is the insincerity manifested in a speech that I want to read. This is the speech of Judge Goodwin in the convention on the subject in hand.

Mr. President, Mr. Evans says it would be an unusual proceeding—

that is, to adopt this Territorial enactment into the constitution—

and probably it would, but the circumstances are unusual. This has never confronted any other Territory when applying for statehood, and the point in it is this,

when Mr. Thurman the other day thought that the article in the ordinance was not sufficient, that it ought to be strengthened, I was in hopes that his idea would be carried out by the convention solely as an evidence of good faith. It won't make any difference in the future. There is no State where the laws are enforced against the sentiment of the people. Now, if public sentiment of the people of this Territory is that the ordinance shall be backed by legislation which shall make penalties and enforce them, that will be done. If a change should come, and the sentiment should be that it was nobody's business, we will do what we please, that will be the rule. The question that confronts us is just this: We know that almost every church organization outside of Utah in the United States will scan this constitution; they will study it with a disposition to, if possible, find some fault in it. Now, when they do that, and there is merely a declaration that there will be no more polygamy, they will simply laugh. They will say, "Those people have simply made a declaration and have provided no means on earth to enforce it." It is not what is to be after statehood is obtained, but it is, how to obtain statehood. For instance, the President of the United States is, I am told, a member of the Presbyterian Church.

I think he is a little lax [laughter], but no matter. He may have fixed it all right with his own soul. He professes to be a Presbyterian. He has a great many Presbyterian friends. He is a lawyer. He construes things exactly as I would construe them when he has the capacity to. [Laughter.] Now, when this constitution is carried up to him we will suppose a case; we will suppose in the same election by which this constitution is approved there should be Republican officers elected all over this State. He not only will have the Presbyterian Church behind him, but he will have every Democratic officeholder in Washington and all through the country telling him that there is a point where he can afford to delay. It won't make a bit of difference to Utah what is in this constitution in regard to that particular matter. The idea is to have something to present to the President which he and his friends can find no flaw in; that is, that the enabling act has not only been carried out in the letter, but the means have been provided to enforce its mandate.

I had intended to offer and try to argue an amendment to the ordinance. This amendment this morning covers the case, and what objection is there to passing it? Are we at this time in the convention going to say that it is legislation? It is on a theme that we have no precedent for. We are confronted here with this condition: The enabling act tells us that we must (and I presume means in an effective way) declare forever against polygamy and plural marriages. We ought to do it in such good faith that there would be no question about it. If two years hence, or four years hence, the legislature desires to do anything else it can do it. If the constitution is adopted and Utah is admitted as a State, the people can revise or call a convention, and make a new constitution within a year or two. Let us go as the sovereign States went. Every one of them had statutes. They had provisions in regard to slavery, that there should be no more slavery or involuntary servitude. It was finally enacted in the Constitution of the United States, and other provisions; and while some of them did not intend to keep those provisions, there was nothing in what they presented that there could be any criticism of. As far as the words go, the words were apt. They said: "I care nothing about the future. I am perfectly willing to trust it. I have perfect faith it will be all right."

But let us fix it so that the President of the United States, at least, can not, in his obstinate way, say, "It does not suit me; you had better go back and try it over." You know, Mr. President, he does not want any more silver Congressmen. You know he has peculiar ways. Once or twice he has pretty nearly neutralized the law, and when eight or ten of his constituents get around him and tell him he ought to do it, then he takes it upon himself to think that he was raised up by God Almighty to be the savior of the United States, and when a man gets in that frame of mind there is no telling what he will do. Let us fix it so that neither he nor his friends can criticise one word. It will make no difference to Utah. *Let us act in absolute good faith so far as our words are concerned*, and have it fixed so that a penalty, if that is disobeyed, can be inflicted.

The man who made that speech was Judge Goodwin, the man who started the particular storm that has been following in my wake during the last eighteen months.

The CHAIRMAN. As long as it stays in your wake it will not disturb you.

Mr. ROBERTS. No, sir; I think my nerves have been educated in such a school that I am not easily perturbed.

You might, perhaps, have expected some hairbrained, wild, fanatical, deceitful, hypocritical "Mormon" to have made a speech of the

description I have just read; but this speech was made by a gentile, a judge, the editor of the Salt Lake Tribune, who was and is a bitter anti-Mormon, and has been for over twenty years; and it was the only invitation, I am thankful to say, that was tendered to that convention to act in that deceitful manner.

Now, Mr. Chairman, I want to read what was said in response to that. That speech was made in the forenoon. In the afternoon of the same day, Mr. Roberts, of Davis County, made the following remarks. This is from page 1744 of the record:

Mr. ROBERTS. Mr. President, I am in favor of adopting the amendment offered by the gentleman from Salt Lake. I think, sir, that it should prevail. First, and principally, that it should appear without any equivocation whatsoever that, in absolute good faith, the people of Utah intend to carry out the condition upon which statehood is to be granted to the Territory; for Congress did require, by its enabling act, an express stipulation upon this subject, and I believe its intention was to have a declaration that would be effective and not merely an empty assertion. I think a provision of this character is absolutely necessary to the document we are drafting, in order to establish beyond all question the fact that we intend to carry out to the letter our agreement as expressed in the compact with the United States. But, sir, I do not think that this amendment should be adopted by this convention in the spirit in which it was discussed by the gentleman from Salt Lake this morning [Mr. Goodwin].

One of the reasons urged for having a stenographic report of these debates, as I understand it, was for the purpose of assisting those who will interpret the constitution in understanding what the intent of the convention was that framed the constitution. And, sir, if we adopt this amendment in the spirit in which that gentleman discussed it, those who interpret the constitution in the light of what was said upon the various propositions would be led to conclude that this amendment was not adopted by the convention with any real intention to have it put in force, but merely for the purpose of removing from the eyes of the President of the United States, who is to pass upon this instrument, and his counselors, and to silence any opposition that might be raised against it on the part of sectarian peoples throughout the United States, and that it was not a real, bona fide determination on the part of this constitutional convention to carry out that provision with good intent.

Mr. MCPHERSON. Does this enabling act allow the President to determine whether a proper constitution was adopted or not?

Mr. ROBERTS. He had to pass upon the constitution, as I understand it.

Mr. MCPHERSON. I don't know whether it was Congress or the President that had to pass upon it.

Mr. ROBERTS. If it was not satisfactory, I understand the President had the power to reject it. Utah was admitted by the proclamation of the President.

Mr. MORRIS. And not passed upon by Congress, then?

Mr. ROBERTS. No, sir.

The CHAIRMAN. It was his duty to determine if the constitution complied with the terms of the enabling act. He did so on the 4th of January, 1896.

Mr. MORRIS. It was approved by proclamation of the President, and not by act of Congress?

Mr. ROBERTS. To continue—

Now, sir, I scorn all such proceedings as that. I believe that what we do here we do with real intent of heart and without nonsense, and for that reason and in this spirit we should adopt this amendment, and then have it carried out just as it is intended to be carried out. I hope, sir, that these remarks, and the remarks that other gentlemen have made and doubtless will make upon this provision of the constitution will have the effect of removing from the proceedings of this convention this seeming insincerity, which ought not to exist in a convention of this character. Why, sir, we would give little credit to the intelligence of the man who is to pass upon this instrument before our labors are finally completed in bringing Utah into

the Union, if we suppose that he could not see through this flimsy screen that it is proposed to cast over our conduct here, if we let this provision go in under the spirit of that discussion; and, sir, I hold that we ought to adopt it in a spirit of earnestness and with honest intention to make it effectual.

It was after this speech of Judge Goodwin and my reply to it that I have just read to you that Mr. Varian said in his remarks, when he referred to it and said that he had no use for a sneak, referring to Judge Goodwin.

The CHAIRMAN. That was as to the polygamy section of your statute of 1892?

Mr. ROBERTS. Yes, sir; the Territorial statute of 1892.

Now, sir, I think it is decidedly clear that so far as the constitutional convention of Utah is concerned, they took the view of the enabling act, the requirements of the enabling act that I have presented here, namely, that they were required to stop "polygamous or plural marriages" for the future, and that they were not called upon to disturb the relations that had existed or did then exist by reason of marriages that had come down to us from the past. This discussion, as I say, was open. It was officially reported and officially printed. It was practically published in the daily papers in the proceedings of the convention.

These religious people who are now at the bottom of this agitation, or many of them, were present, and were watching the proceedings of this convention. Finally, after the convention completed its work, and the constitution was referred to the President of the United States at Washington, all those who were opposed to the constitution had ample opportunity, of course, to make their objections, and there were several thousand votes, as I remember it, that were cast against the constitution. Yet, so far as I know, or have information, there was no complaint made against this constitution on the ground that it failed to meet the requirements of the people of the United States as expressed through the action of the Congress of the United States. That was not a feature of objection that was urged against it at all. And the idea that with this discussion public the State of Utah has nevertheless succeeded, to use vulgar parlance, in working a sort of "bunco game" upon the President and people of the United States is so ridiculous that to my mind it is at least something more than absurd.

The CHAIRMAN. Your State legislature, however, did go on and pass a clause against the practice of polygamous living, didn't it?

Mr. ROBERTS. Not immediately, sir. I shall come to the consideration of that presently.

Mr. LITTLEFIELD. Not until the revised statutes of 1898, I think.

Mr. LANDIS. I would like to call attention to the discussion in Congress before the passage of that enabling act. If you will remember that provision was incorporated in the enabling act in response to a speech made by Representative Powers, of Vermont, who later resented this provision. Mr. Powers said:

Mr. Chairman, I suppose there is no question that every member on the floor of this House desires sincerely and honestly to put an end to polygamous marriages in the Territory of Utah, and such being the case it seems to me that there ought to be incorporated in the organic act by which the Territory is brought into the Union as a State some provision which shall assure the public mind that this institution, which gentlemen tell us has already seen its best days, shall never again raise its head in Utah. I think a misapprehension exists in the minds of some of the members as to the scope of the amendment which I offer. If the House will indulge me for a moment, I desire to point out how the language I propose to put in harmonizes with the language already in the bill.

And then the provision. And then he continues:

Mr. Chairman, if we are to admit the Territory of Utah as a State at all into this Union let us admit her just as we admitted the other States. Let us prescribe, as well as we may, against the practice of polygamous marriage, but let us do it in an orderly way, and not undertake to incorporate a legislative provision into the body of the enabling act. Let us prescribe, as well as we may, against the practice of polygamous marriages, not the performance of polygamous ceremonies, but against the practice of polygamous marriages.

And after that, Mr. Dolliver makes a speech, and he said:

If there has been any objection to the admission of Utah that has had force with public men, it has been the existence of the anomalous institution of polygamy in that Territory. I say candidly to the House that I would not vote for the admission of the Territory except upon the assurance that the institution of polygamy is dead.

And thus in their entire discussion, from one end to the other, no man at any time has attempted to draw a line between the marriage already solemnized and marriages that might be solemnized in the future, not a line.

Mr. LITTLEFIELD. What you have quoted is the most specific language that can be found in the debate, is it not?

Mr. LANDIS. Yes; that is specific.

Mr. ROBERTS. And yet the amendment of Mr. Powers was the one adopted, and forms the only requirement of the people of Utah, namely, that while there shall be perfect tolerance of religious sentiments, "polygamous or plural marriages" shall be forever prohibited.

Mr. LANDIS. And he speaks later of the abolition of polygamous marriages.

Mr. ROBERTS. Which was understood by all of us, as I have demonstrated by the discussion in the convention proceedings, as going to the act of contracting plural marriages for the future.

Mr. LANDIS. Undoubtedly it was so understood by those who participated in the constitutional convention in Utah, but evidently not so understood by the gentlemen on the floor of the House who entered into the discussion there.

Mr. ROBERTS. Doubtless different views on that will be entertained, and I don't know that there will be any harmony between other gentlemen and myself with reference to it. But I believe the language used by Mr. Powers, the gentleman from the State of Vermont, is susceptible of an understanding that it went to the practice of plural marriages only and had reference to the contracting of marriages for the future only. I wish to say that I believe that.

Mr. LITTLEFIELD. That is, marriage as an act and not as an institution. That is the distinction.

Mr. ROBERTS. If the marriages were prohibited the institution of polygamy is doomed, of course.

Mr. LANDIS. Doomed, but not dead.

Mr. LITTLEFIELD. The distinction in your mind is between the act and the institution.

Mr. LANDIS. Yes; my contention is that Congress, when it passed this enabling act, by that provision meant to cover the entire question of polygamy, to cover the entire system, and it strikes me that is brought out by the subsequent legislation in the State of Utah on the question of polygamy and on the question of unlawful cohabitation.

Mr. MORRIS. And Mr. Roberts's position was that it was intended to cover the future celebration of ceremonies of that kind, and thereby

the institution of the relation in the future, and not to cover the practice of the condition already existing——

Mr. ROBERTS. From marriages that had been performed in the past. Quite right.

Mr. LITTLEFIELD. In other words, it was section 1 of the Edmunds Act, and not section 3. That is about it, is it not?

Mr. ROBERTS. Yes, sir. My point is this: That this question being before Congress and that system practically having been abandoned from 1890—that is, the practice of plural marriages having been abandoned from 1890, and the clearest evidence existing that it had been so abandoned—the object really was to provide against its revival in the future by bringing in this provision that would forever prohibit such marriages in the future. And that so far as the conditions that existed in Utah, coming down to us from the past, were concerned, that was a matter that the State of Utah itself would be able to contend with. And, of course, as I said yesterday, the fountain of evil being dried up, Congress was willing to let the streams take their course under the direction of the local effect of such laws as might be operative upon them.

I now desire to briefly call to the attention of the committee the conditions that existed in Utah after the formulation and adoption of the constitution and the existence of statehood. To show that this settlement of the polygamy question in Utah was acceptable, it was of course in order, immediately after the adoption of the constitution, that the people should prepare for statehood. Officers were to be elected for national positions and for State positions, and men who were in the status of polygamy, or at least who had been connected with that institution in the past, were among those who were freely nominated by the conventions of the two political parties in the State. The Democrats of Utah were quite generally in favor of electing Senators by vote of the people, and the Democratic convention thought to approach that condition as nearly as might be by nominating men for the Senate in their party conventions.

The two men who were nominated in 1895 in the Democratic convention were Hon. Joseph L. Rawlins, now Senator from the State of Utah, and Moses Thatcher. Mr. Thatcher was a Mormon and had been an advocate of this marriage system, and it was generally known that he had held polygamous relations and had polygamous wives then living. He was nominated in the convention for the Senate, and would have been elected had the Democratic party been successful. I myself was nominated for Congress in 1895, and certainly all the objections that people have against me now existed then. The nomination came to me, and also to Mr. Thatcher, without protest from any quarter whatsoever. We went through a rather stormy campaign, and at no time was it intimated that I was an undesirable candidate on account of my connection with this plural marriage system in the past.

Mr. MORRIS. Who was elected at that time?

Mr. ROBERTS. Mr. Allen.

Mr. MORRIS. Was he admitted to Congress?

Mr. ROBERTS. Yes, sir. Mr. Allen was a Gentile and a Republican. I think, however, he served only for one session of Congress then. Our election came in 1895. It was an odd-year election, and I think his term was merely the last session of that particular Congress.

Not only was this the case in regard to these national positions, but it was true in regard to our local officers. Men were nominated by both political parties for office in the Territory—members of the legislature and for other State positions—who were well known to be connected with the polygamous marriage system of the Mormon Church, and all this without any protest on the part of the Gentiles of the State of Utah, or any complaint that there was any breaking of faith, or any violation of the agreement or compact with the United States.

It was during this time, too, that Federal appointments were made—that is, succeeding statehood—without any objection with reference to their connection with polygamy, except from very obscure and narrow-minded sectarian persons; and that, by the way—that is, those objections—did not come up until some time later. That did not immediately transpire after the admission of the State, but a year or two afterwards. And these appointments were made—and it is useless to attempt any denial of it—they were made in the face of the fact that protests were made, as was supposed, before the proper authorities, and those protests were based upon affidavits that were made concerning the polygamous practices of the candidates for appointments to Federal positions; and those same protests were ignored and these men were appointed to those positions.

Mr. LANDIS. At what particular time did this occur—to what time are you referring?

Mr. ROBERTS. I think, sir, it must have been at least in 1897 when Mr. Smith, of Logan, the Presidential post-office appointee, and also Mr. Graham, another Presidential appointee, received their commissions.

The CHAIRMAN. Where were those affidavits lodged?

Mr. ROBERTS. The gentleman who collected them sent them to the President of the United States; and he received assurances that they had been received in Washington.

Mr. MCPHERSON. From whom; from his private secretary?

Mr. ROBERTS. I do not know. I take it, from the private secretary. He would hardly receive the assurance from the President himself. At the proper time, Mr. Chairman, that man can be placed on the witness stand, the man who collected those affidavits. He received from Washington the assurance of their having been received at the Capitol. Moreover, I have the written statement of Senator Rawlins that that question was referred to him by his colleague in the Senate, and he was asked if he had any objection to the appointment of these men. It was stated to him that there were before the Committee on Post-Offices and Post-Roads affidavits that these men were in the practice of polygamy—that is, unlawful cohabitation—and Mr. Rawlins said he had no objections on that ground whatever against them. Of course, Mr. Rawlins being a Democratic Senator, I take it that it was a matter of formality, only a matter of courtesy to him, to call his attention to the Utah appointments.

Mr. MCPHERSON. I do not understand your argument. If I have understood you correctly, for the last five or ten minutes you have been arguing that there was no objection made out in that country at all to men who were living in polygamous relations with wives married theretofore. Now you are making an argument that the people were aroused and protests lodged with President McKinley, perhaps.

Mr. ROBERTS. I made the exception to the general statement that

there were a few obscure parties and narrow religious people who had made these protests and gathered these affidavits, but that the situation was accepted generally by the people of the State of Utah as a settled and closed incident and that such relations with reference to polygamous living that grew out of past conditions occasioned no animosities in the community, and the settlement fixed by the constitutional convention was accepted by the people; and further that objections made to the candidates for appointments on these grounds were waived here at Washington. I myself congratulated Mr. Smith upon the fact that the efforts of those few parties had not succeeded in preventing his appointment to the post-office at Logan, of which place he was in every way worthy.

The CHAIRMAN. Was he a polygamist?

Mr. ROBERTS. I don't know; these protests were made on that ground.

The CHAIRMAN. The charges might have been investigated, for all you know?

Mr. ROBERTS. I can not answer as to that. These men were not proven guilty any more than I have been proven guilty.

Mr. LITTLEFIELD. That is, there had been no indictment and trial?

Mr. ROBERTS. No indictment; no accusation before the court, and I take it that it was the personal enemies of Mr. Smith, especially there at Logan—some of his competitors for the office of postmaster at Logan—that undertook this scurrilous piece of work. It was brushed aside and, as I believe, properly brushed aside, especially in view of the settlement of this question in Utah, as it was understood. But it would be useless to say that those protests were not made and that these charges were not made against those candidates for Federal appointments. They were made, and at the proper time the fact that they were made can be sustained by evidence that is not to be controverted.

Mr. MCPHERSON. What is your opinion of those two men? Were they polygamists or not, or were they living in polygamous relations?

Mr. ROBERTS. All I can say is that it was generally understood that they were, and my recollection is that—I do not wish to do them an injustice—that Mr. Graham, in the controversy of the past, had been convicted of unlawful cohabitation, although I am not sure with reference to that matter. I think that was the case, and of course if it is the case it would be established by the record of the court there.

The CHAIRMAN. Are they still in office, Mr. Roberts?

Mr. ROBERTS. Yes, sir; they are still in office.

Mr. SCHROEDER. Mr. Smith is not, is he?

Mr. ROBERTS. I think so.

Mr. SCHROEDER. My impression is that his bondsmen are in charge of the office.

Mr. ROBERTS. That, however, was not on account of polygamy. Mr. Smith got into some financial distress, and I understood went to Alaska and left his post-office in the hands of his agent. He was not removed, and he has since, I understand, returned from Alaska.

I desire to call the attention of the committee to the fact that after the settlement of the question by the adoption of the constitution and the existence of statehood, there were no prosecutions for unlawful cohabitation from the time of statehood until recently, some four or five months ago; and I now call attention to the question that was

directed to me a few moments ago about the existence of these laws. There was introduced into the first legislature following statehood a bill upon this subject and the legislature refused to pass it, some of the legislators holding that the old Territorial law of 1892 was operative and that no legislation was necessary. But it was generally believed, in consequence of the argument and contention of Mr. Varian in the constitutional convention, that if the law were valid—that is the law of 1892—then the rejection of the part of it that related to unlawful cohabitation was in effect repealed, in line with the question that had been submitted to him by Mr. Evans upon that point.

That, of course, might not be a legal fact, but it was a general understanding; and that Mr. Varian persuaded the convention that the law was invalid is evidenced by the fact that the convention thought it necessary, in order to meet the requirements of the country on the subject of polygamy, to adopt in the constitution the section on the subject of polygamy, that the point might be safeguarded; that if that law was invalid we might go into statehood with something more than a vague provision relating to polygamous or plural marriages.

Mr. MORRIS. I understood you a moment ago that the supreme court of the State of Utah had held the whole law of 1892 valid.

Mr. ROBERTS. I am coming to that.

Mr. MORRIS. And therefore that Mr. Varian's position was not sound.

The CHAIRMAN. And that all the provisions of that law continued in force?

Mr. ROBERTS. I have already stated what the general understanding of that matter was. The State legislature appointed a code commission to codify the laws of the State, and of course it devolved upon them to codify those Territorial laws which had been made operative in the State by the constitution. And in the code which the commission subsequently submitted to the State legislature they included this whole law of 1892, both the polygamy provision and also the provisions relating to unlawful cohabitation.

The CHAIRMAN. When was it that that occurred?

Mr. ROBERTS. The code was adopted in January, 1898, by the State legislature.

Mr. MORRIS. Right there, if you will pardon me. Was that law of the Territory of Utah? I understood you to say they adopted the words of some previous law. Did it adopt the words of the Edmunds law or the Edmunds-Tucker law?

Mr. ROBERTS. The law of 1882, the Edmunds law, omitting, however, the political disqualifications.

Mr. MORRIS. The disqualifying clause?

Mr. ROBERTS. Yes; for voting and holding office. With the exception of that the Edmunds law was practically duplicated by the law of 1892.

Mr. MORRIS. Then section 8 was not reenacted?

Mr. ROBERTS. No, sir; it was not reenacted. The same definition, however, was given; the same penalties were incorporated, so we had a period from the adoption of statehood, from the existence of statehood in January——

Mr. MORRIS. Excuse me, I am not interrupting for the purpose of confusing you; on the contrary, I am doing it for my own information as I go along. The effect of the Utah supreme court was, then,

that the action of the constitutional convention had continued the Territorial act, and that the Edmunds Act had ceased to be of any effect. Is that right?

Mr. ROBERTS. Yes, sir. The United States laws would, of course, cease to operate in the State on account of the fact of statehood.

The CHAIRMAN. The provisions you had taken under the Edmunds Act and continued in the law of 1892, operated in the State from the birth of the State, on?

Mr. ROBERTS. Yes, sir.

The CHAIRMAN. Notwithstanding the view you have stated was taken in the constitutional convention?

Mr. ROBERTS. Yes, sir; that is right.

The CHAIRMAN. When did the supreme court of Utah have occasion to pass upon that question?

Mr. ROBERTS. On the 4th of April, 1898. The code had been adopted in January previous.

The CHAIRMAN. And the codifying condition had also included those provisions of the act of 1892 in the Utah State code?

Mr. ROBERTS. Yes, sir; and I was merely calling attention to the fact that the general opinion prevailed that there was no law in the State of Utah with reference to the subject of unlawful cohabitation, while as a legal proposition, of course, the law existed.

The CHAIRMAN. One question for further information. You said that the general impression was that all of those provisions that were in your law of 1892 were not continued in force by the constitution. How did it come that prior to any determination of that fact by the supreme court your codifying commission also incorporated them; because they held the same view?

Mr. ROBERTS. Yes, sir. Evidently they held the view that the law was valid.

Mr. MORRIS. Do I understand, then, that this supreme court decision was after the codification of the law?

Mr. ROBERTS. Certainly.

Mr. MORRIS. And were those codified laws enacted by the legislature? Was that in their code that was adopted?

Mr. ROBERTS. Yes, sir.

Mr. MORRIS. Might not, then, the decision have been that that was the law of Utah without reference—oh, it was a prosecution begun prior to the codification of the law, and therefore the decision related to the existing law prior to the codification?

Mr. ROBERTS. Yes, sir; but I call attention again to the general view that prevailed of there being no law against unlawful cohabitation, and under those circumstances and ever since the Mormon people and Gentile people have lived in the most friendly relations. Gentile neighbors, so far as it appears anywhere, took no exception to the continuance of those relations where they were continued. There were no prosecutions entered under complaints by the residents of the State of Utah in its various parts. The Gentiles were not hauling Mormons before courts and making accusations against them upon this subject, and I have observed to some extent that the ladies that were involved in this system of marriage were quite generally received among their Gentile neighbors and friends without protest, and the whole question was accepted as a settled fact that there was no occasion for disturbing those relations. Everybody was convinced that public

policy and that justice to these people who had become involved in these relationships did not call for any severe execution of that law.

So that from the adoption of statehood until now, notwithstanding the little flurry of this past summer, there has been no disposition on the part of Gentile neighbors to complain against their Mormon neighbors on that subject. There were no accusations made; there were no prosecutions begun anywhere, until at last a gutter-snipe paper in New York, sensational in its character and having a policy for the whole universe—running, if you could believe its statements, State governments and general governments, conducting foreign wars, and doubtless projecting a future government for the planet Mars—unearthed a man in Utah, its own worthy agent, sneaking enough in his disposition, little enough in his soul, to stand in the position of a "common informer," the most despicable of wretches, to run from one end of the Territory to the other as the agent of this paper referred to, and the instrument also of the Utah sectarian missionary bigots, to spy out the relationships of men and women and enter complaints from one end of the State to the other.

And those are the only prosecutions that have taken place in reference to that subject. There have been other prosecutions under this law, but they were not cases of unlawful cohabitation, but of adultery, or of fornication. Owen has been the one who has haled men before courts for this offense. It has not been done by the people of the vicinage where these parties reside against whom accusation was made. He came into my county, Davis, and made an accusation for adultery against me. I called attention yesterday to the fact that when I heard of that procedure I expressed my willingness to return from the East to Utah if such a charge should be made against me, but the officers of the law ignored the charge. The governor and all the apostles of the Mormon Church were summoned as witnesses. I have been given to understand that the people who were summoned were unacquainted with any of the circumstances and could give no evidence, and consequently the charge was not entertained; and there has been no action with reference to it up to the present time, and what the present status of it is I do not know.

But those were the conditions that existed, and the settlement of this question seemed to be quite generally approved. There has been a good deal of talk before this committee, and a good deal more of it in the literature that has been circulated throughout the country in regard to the Mormon Church having acted in bad faith, and it is a part of the accusation; a part of the reason offered for my exclusion from my seat, or expulsion if I should be seated, that the Mormon Church has been all along acting in bad faith.

Mr. MORRIS. I do not think this committee has gone into any action of the Mormon Church.

Mr. ROBERTS. Perhaps not, but I call attention to this fact, that there is piled up here in the halls of this Congress a petition some seven millions strong, I am given to understand, and I take it that that petition has had its influence upon the House, and that it has its influence here in this committee, and, therefore, the public accusations that have been made in the literature circulated that resulted in producing that petition is a legitimate subject for discussion on my part, not that it has been directly in issue here in the testimony before the committee, but that it is a question that overshadows it, and we can not get rid of

it, and I think in justice to my cause I ought to make reference to it, or reference to those things that bear upon it, and show how it has been secured.

These accusations against the Mormon Church were made for the purpose of aiding the agitation that has resulted in the gathering of these petitions. These petitions have been gathered from women's clubs, from Sunday schools—I don't know whether the nurseries escaped or not, but we had a statement made here by a lady (Mrs. Foster) apparently interested in the discussion of these questions that the Sunday schools had contributed their mite to the petition—and the solicitation of and securing of children's names to that document was justified on the wonderfully logical ground that perhaps some day they might go out to Utah and herd sheep. Ever and anon, as these agents were moving about collecting these petitions, one bomb after another was fired by the sensational press of the country in aid of it. The literature contains the charge that the member from Utah had contracted a marriage since statehood. It was also reported—and I have the newspaper clippings and the circumstances to refer to if deemed necessary to prove it—I omit reading them only in the interest of saving time—it was also charged that an alleged polygamous wife of the member from Utah had recently given birth to a child, the very day being named. The circumstance was denied by the neighbors of the lady in question and by the lady herself, who was waited upon by a reporter of another paper, and every evidence was given that such an occurrence had not taken place. The fact that the story was a fake was telegraphed to some of the newspapers in New York and they were asked if they wanted the contradiction of the story. They did not want it. And a few days later they published another flaring report that the child whose birth had been reported had been secreted away. The country was then flooded with these false statements surrounding the conditions in Utah generally, and concerning the member from Utah particularly. So this storm was created until it burst upon Congress with what violence you gentlemen are already aware of. And it is quite generally supposed that as a result of the existence of this decadent institution in Utah, because of the still lingering heat of the embers of that old fire, now rapidly dying out, that the American home is absolutely endangered! And American womanhood is in danger of being bereft of its dignity! And woman of her sanctity.

Congress is appealed to in the most pathetic tones and in the most passionate language to rise equal to the occasion, even if you have to disregard the circle that bounds your rights and operate within another circle that is supposed to be larger, that indicates your power, altogether ignoring the fact that the circle that circumscribes your rights to act also limits your power to act. But you are called upon to seriously think that the conditions that exist in Utah by reason of the remnant of polygamy there that there is a wonderful menace to the American home. The people here in the East—many of them good and honest and sincere people, altogether worthy of your most profound respect and attention, having been misled by these false reports concerning Utah affairs—stand here and undertake to look over the mighty range of the Rocky Mountains to find an institution that threatens the American home.

If it were necessary I could call the attention of this committee and

of these good people to ten thousand evils that threaten the American home before you would have need to look in the direction of such polygamous relations as still exist in the State of Utah as such a menace. I think, however, Mr. Chairman, that I have substantially covered in this statement the particular features that I desired to consider, and shall simply offer a few remarks in review of the argument I have sought to present to this committee.

I.

In the matter of the prima facie right of the member from Utah to his seat in the House of Representatives, I have, of course, already called attention to the fact that he presents his certificate of election. The question of citizenship having been raised, he presents that certificate; and right on that head, by the way, I have used the interval afforded me in looking into some authorities that I desire to cite and submit in opposition to the authorities submitted by Judge Carlisle.

Mr. LITTLEFIELD. On what subject?

Mr. ROBERTS. On the subject of naturalization. The meaning of the word "citizen" in the United States Constitution conveys the idea of membership of a nation and nothing more, and women are citizens within its provisions. (Minor *v.* Happersett, 21 Wallace, p. 162.)

It need not appear by the record of the court of naturalization that all requisites prescribed by law favoring the admission of aliens to the rights of citizenship have been complied with. (Stark *v.* Chesapeake Insurance Co., 7 Cranch, p. 420.)

A certificate by a competent court that an alien has taken the oath prescribed by the act respecting admission raises a presumption that the court was satisfied as to the moral character of the alien. (Campbell *v.* Gordon, 6th Cranch, 176.)

In 5th Lee (Virginia case), page 743, it is also held that—

the fact of an alien applying to a United States court and doing all that the court required of him makes his citizenship unimpeachable. If the court has failed to note some of the details on the record, that is no fault of the applicant. He has done all that the law and the court required.

Mr. MCPHERSON. I understand that there is a recent Virginia case on that same line.

Mr. ROBERTS. I am not acquainted with that. Of course my research has been limited. Here is another authority:

When he has done what the certificate says he has done, when he leaves with the clerk of the court such papers as he has signed, and when the court tells him, as it does by the certificate, that he, having done all that the court thereupon ordered, that he be admitted to be a citizen, and had admitted him to be a citizen, and when the court gives the certificate into his keeping he has done all that he can to comply with the statute.

That was in the matter of Peter Coleman, 15 Blatchford, United States Circuit Court Reports, page 421.

Mr. MORRIS. The order of the court can not be collaterally attacked. It can only be attacked directly in the proceeding itself. If the order of the court recites that he has come before the court and complied with all the requirements of the law, and therefore it is ordered that he is a citizen, then that order is conclusive, except in a direct impeachment to set it aside—an impeachment in the proceedings there.

The CHAIRMAN. In 7 Cranch, the Supreme Court case, that point seems to be substantially decided the other way. I say that because I

see nothing, so far as my judgment is concerned, to convince me that Mr. Roberts is not a citizen. I think that the question of citizenship can not properly be attacked.

Mr. LITTLEFIELD. Some of the committee might want to go into this.

Mr. DE ARMOND. Or some members on the floor.

Mr. ROBERTS. I wanted to remark further on that, that so far I take it the committee has not before it the transcript from the court upon which Judge Carlisle has made his argument, and I don't know whether the Judge had before him a certified copy of the court proceedings upon which he based his letter to the committee.

The CHAIRMAN. The criticism upon that was this: It was the naturalizing of Mr. Roberts, together with many others. It simply declared in a general way that having made such proofs, and having made such renunciations and having disclosed such facts, covering by general language all the statutory requirements, he was therefore admitted to full citizenship. The criticism made of it was that it did not undertake to specifically determine certain jurisdictional matters, but it did say, having made such proofs, having made such renunciations as the law required, from which I would infer that the court must be presumed to have acted upon such information as would justify it in so acting.

Mr. ROBERTS. I call attention to the fact that it was a United States court also, and had full jurisdiction. With the question of citizenship admitted, and of course I take it that if there is any further discussion on that head that I would be informed in relation to it, no further question arising about it——

Mr. LITTLEFIELD. I think Mr. Roberts ought to have a chance now to say all he wants on that subject.

The CHAIRMAN. Yes. Of course the committee have merely expressed what their notions are. They might change their minds, perhaps, and what you want to say you ought to conclude now.

Mr. ROBERTS. I have concluded; and I think my evidence will be sufficient, with the certificate I will leave with you and with these authorities that have been cited. But, as I understood it, it was quite probable that Judge Carlisle might be present, and if he should be present and should refer to that question again——

Mr. MCPHERSON. He is not invited to discuss that any further?

The CHAIRMAN. No; he was invited to discuss the other propositions.

Mr. ROBERTS. I think I understand the committee on that subject, and I am quite content to leave that matter with the authorities cited and the certificate of citizenship. But the contention I make is that there can be no question in regard to my citizenship, and therefore I take it my prima facie right has been fully established before this committee in the argument which has been presented and the facts that have been produced.

Possessing all the qualifications prescribed by the Constitution of my country, and being legally and unquestionably elected to this position, I take it that the House and this committee can only become the "judge" of my election and my qualifications, those qualifications being confined to the qualifications prescribed in the Constitution, and that neither this committee nor the House can add to nor take from those qualifications; that if it should be held, in view of the old iron-

clad oath, that additional qualifications might be made, I call attention to the fact that the qualifications in that particular oath resulted from the act of the entire Congress and not from any one branch of it alone.

It was a law passed by the United States Senate and by the House, signed by the President of the United States, and of course was justified wholly upon the ground of being a war measure, instituted to assist in preserving the life of the nation; and with the temporary danger that brought it forth it, too, passed away, and it is no longer a part of the requirements of a Congressman to take such an oath as that.

II.

I have tried to make it clear to this committee, too, that this committee, deriving its power, of course, from the House, a branch of the legislative department of the Government, has had no right to invade the sphere of the judicial branch of the Government and undertake the establishment of the guilt or innocence of this Member of the House as to the commission of a misdemeanor in the State of Utah, and that the only evidence that would be admissible for the consideration of this committee would be such as is established by a court record where a conviction has been had after due process of law and where the one charged with the offense had the protection of the forms that are afforded by due process of law.

The demurrer on that head at the time it was offered was set aside by the committee, and the member from Utah was investigated as to the offense charged; but if this committee shall follow the rules of evidence that obtain in the courts of law, I hold that the offense of unlawful cohabitation has not been proven against the member from Utah beyond what is established by the court record of 1889 in the Territory of Utah. But if, contrary to my contention, the committee should hold that the evidence before it is sufficient to establish the misdemeanor charged, then I hold that the misdemeanor does not constitute a disqualification for the office of Congressman. The contention that the disqualifications for voting and holding office created by the Edmunds law and once operative upon the member from Utah, and that it now operates upon him, is untenable, in my judgment, for the reason that it was a measure intended to operate strictly and alone in the Territories of the United States and other places over which the Congress has exclusive jurisdiction; that it was not any part of the intention of the lawmaking power to make it operate as a disqualification for a Member of Congress. However it might operate upon a Delegate from a Territory, a creature of the law of the United States, is not pertinent to the question.

It was not intended at the time of its passage to constitute a new qualification for membership in the House of Representatives, and therefore ought not to be considered with reference to the present member from the State of Utah. And then, again, I further call attention to the fact that the disabilities that once operated upon the member from Utah have been removed by the effect of amnesty, by the effect of the enabling act, and by the act of the State of Utah when it declared what the qualifications of its electorate should be. Any one of those acts is sufficient to remove those disabilities, and certainly all three of them, operating together, would place the question beyond all possible doubt.

III.

Such are the circumstances surrounding this case, such the circumstances surrounding the settlement of the polygamy question in Utah, and such the peculiar conditions that obtain owing to the beliefs of that people, that broad-minded statesmanship and every consideration of good policy require that the settlement of this vexed question of polygamy in Utah shall remain under the terms fixed by the constitution of the State of Utah and the acceptance of the State by her admission to the Union. The State of Utah has been making great progress in the matter of coming into harmony with her sister States. We have had our difficulties and conflicts in the past. I am not here to claim that my own people—the Mormon people—have been free from blame entirely and have not offended against the canons, perhaps, of good taste and sound reason in their contentions for what they regarded as their religious rights.

I am not here to ask that it be considered that they have been perfectly blameless in the spirit in which they have waged their warfare against what they have regarded as an infringement of their religious rights; but I call attention to the fact that while at times they may have been overzealous in these things, they and their religion have been beset by a class of men, not of the first order intellectually or of sound judgment, in a manner that was irritating and not Christian. I think, gentlemen, that I ought to explain to you, in view of at least some expressions that I may have used when referring to the sectarian priests in Utah. I have in my heart a profound respect for men who consecrate their lives to the good of their fellow-men. It matters little to me whether the person who has so consecrated his life comes clothed in the splendid robes of a cardinal of the Church of Rome or appears in the plain garb of the Quaker, or in the dress of a Salvation Army captain, if his heart is true and his consecration to the work genuine.

I say that there is no man who has a profounder regard for such a character than I have. But, on the one hand, to the extent that I honor such characters as these, so on the other do I despise those who make merchandise of such a profession and who make vicious warfare upon people who chance to differ from them in religious convictions. Now, the situation in Utah has presented a tempting field for peculiarly zealous people whose zeal is not always balanced with justice or with judgment, and from your midst sectarian ministers have been sent out among us inspired with religious fervor, and they have made war upon our system, as I have already stated.

But when this question of polygamy was regarded as settled and everyone seemed satisfied with the terms of its settlement, and gentile and Mormon were approaching together, and the social distinctions that had existed in the past were breaking down, and gentiles were visiting Mormons and Mormons were visiting gentile homes, and intermarriages between the classes were quite frequent, all at once it was discovered that the contributions which had hitherto supported missions and mission schools of a sectarian character in Utah were falling off, and hence these parties raised the cry that polygamy was being revived in Utah. They made no distinction in those things between which there was a distinction in Utah—namely the cases of unlawful cohabitation which came down to us from marriages previous to the

settlement of the question, and polygamy or new plural marriages. The country was fired with a belief that the Mormon Church had recurred to the practice performing new plural marriage ceremonies, and that the old polygamy evil was again revived.

That was the condition that the people of the United State were made to believe existed in Utah; and to the East these agents came to gather in the shekels, to continue what was made to appear as a necessary warfare on the old evil of polygamy. Now, that is how the agitation on that question came to be revived, and it hindered the progress of Utah. But notwithstanding that, I undertake to say that Utah has made wonderful progress toward being assimilated with her sister States comprising the American Union. As an indication of that, and I offer it as a reason why this agitation ought not to have too much influence with either the House or the committee——

Soon after the disaster overtook the *Maine* in Habana Harbor there was an agitation set on foot in the East that looked to the commemoration of those brave men whose lives were lost by that sad event by the erection of a monument in their honor. A committee of gentlemen was formed in the city of New York to take charge of the enterprise, and they sent out literature to all the churches, asking that they should set apart, I think it was one Sunday in May, when all the contributions of the people for that day should be set apart for the erection of a monument to those dead heroes. The Mormon Church was omitted in that invitation, whereupon it fell to my good fortune to call attention to that omission and to resent it in some public remarks that I made in Salt Lake City.

Those remarks reached the chairman of the committee in New York, and he made an explanation of how the omission took place and stated he would be glad if I would point out to him the way in which the apparent neglect could be remedied. I did that. He followed the suggestions and the Mormon Church was invited to participate in the erection of that monument. The church called upon its branches to set apart a day to consecrate offerings that might be made, with the result that the little Mormon Church, whose patriotism is supposed not to be at par, and composed of less than 300,000 people, contributed one-fifth of all that the churches in this country of 70,000,000 population have contributed to this fund, and we received the thanks of the committee for the response that indicated the patriotism existing in the hearts of the Mormon people.

When President McKinley sent out his call to arms in the recent war with Spain, Utah responded by offering three times the number of her sons that were called for. Her batteries were sent to distant Manila, and the dark night when the battle of Malate was fought, and the success or failure of the battle hung in the balance, it was Utah's guns, manned by Utah men, whose flashes mimicked the lightning flashes of the fierce simoon that was raging, and covered the infantry that was marching to the attack. In more than a score of battles in those distant islands Utah's sons did honor to the State of Utah and honor to our country. The sorrows of this nation are the sorrows of Utah; its battles are her battles: its institutions are her institutions, and therefore she ask for fair and proper treatment before the Congress of the United States when she sends here a Representative possessed of all qualifications that any other Representative possesses, and who is not disqualified by any provision of the Constitution of the United States,

by any United States law or law of his own State, and when he has been honestly and fairly elected, as in the Roberts case, by the people of his State.

Gentlemen, with confidence in your impartiality, and in your fair treatment of me, and thanking you for the courtesies that you have extended to me, and the patience you have manifested in the perhaps unskillful presentation of this side of what I regard as a great controversy, and believing that in your hands it will be safe, I thank you for the attention you have accorded me.

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